No. 87 531

Supreme Court, U.S.
FILED
SEP 26 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

JULIA McCAIN LAMPKIN ASAM, Ph.D. J.D.

Plaintiff/Appellant

vs.

LEE COUNTY DISTRICT SCHOOL BOARD, RAYMA C. PAGE, HOWARD DeVORE, JOHN WILLIAM MILLS, JOHN F. BECKETT, ROBERT L. RATLIFF, RAY V. POTTORF, AND VINCENT L. DeSHAZO

Defendants/Appellees

APPEAL FROM THE

UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

JURISDICTIONAL STATEMENT

Julia McCain Lampkin Asam, Ph.D., J.D.
P.O. Box 1022
University, Alabama 35486

QUESTIONS PRESENTED

I. Whether the Honorable Supreme Court of the United States has jurisdiction to review the instant case as an appeal under 28 U.S.C. 1254(2) because the U.S. Court of Appeals, Eleventh Circuit (86-3142), by affirming the pendent libel per se count, was holding Florida Statute, 119.011(1)[1], state statute, invalid and repugnant to the U.S. Constitution, Amendments One, Fifth and Fourteenth, when the judge of the trial court erroneously directed a verdict concerning the libel per se of Dr. Asam in a public record -- the teacher's personnel file of Dr. Asam located in the Lee County School Board because this case of malicious libel per se in a public record should have been decided by the jury, i.e. Lee County School Board knowingly and acting under color of state law, after notice of falsity, maliciously retained a known false document (P.Ex.9) in

[1]Case, Dade County School Board v. Miami Herald Pub. Co. 443 So. 2d 268 (DCA of Fla. 3rd Dist., 1983) was cited showing personnel file of teacher is public record to Appellant brief (86-3142) to U.S. Court of Appeals, Eleventh Circuit.

QUESTIONS PRESENTED (CONTINUED)

her file which stated that Dr. Asam had been "discharged for misconduct connected with work" when there was no misconduct (see P. Ex.9) and the Lee County School Board through Mr. DeShazo had corrected this false document ONLY at the unemployment office (P. Ex. 11) and not in his teacher's personnel file of Dr. Asam (P. Ex. 9); therefore, the U. S. Court of Appeals, Eleventh Circuit completely misstated the facts in its opinion because there was no corrected document in the personnel file attached to P.Ex 9 showing she had committed no misconduct.

II. Whether the Honorable Supreme Court of the United States has jurisdiction under 42 U.S.C. §1983 because the Honorable U.S. Court of Appeals, 11th Circuit has grossly misstated the facts and misapplied the law (See APPENDIX B) and erroneously affirmed the directed verdict of the trial court because this ruling was inconsistent with previous cases in the Eleventh Circuit, specifically Blanton v.

QUESTIONS PRESENTED (CONTINUED)

Griel Memorial Psychiatric Hospital, 758 F. 2d 1540, (11th Cir. 1985) and Clemons v. Doughterty County, Georgia, 684 F. 2d 1365 (11th Cir. 1982) because the Defendants of Lee County School Board et al. did violate the liberty rights of Dr. Asam under the Fourteenth Amendment to the U.S. Constitution because the original mistake by Mr. DeShazo writing a false document (P.Ex.9), which stated "discharged for misconduct connected with work" when there was no misconduct by Dr. Asam escalated from a mistake to stigmatization when the Lee County School Board refused to remove the said false document (P.Ex.9) after notice and the Lee County school Board failed to place any note on P.Ex.9 that the School Board retained in Dr. Asam's personnel file, a public record according to Florida Statute, 119.011(1)[2] and because the Lee County School Board acting under color of state law did violate the

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[2]Case, Dade County School Board v. Miami Herald Pub. Co. 443 So. 2d 268 (DCA of Fla. 3rd Dist., 1983)

QUESTIONS PRESENTED (CONTINUED)

liberty rights by stigmatizing the reputation of Dr. Asam as a teacher and prevented her from obtaining any teaching position after numerous attempts to obtain a teaching position (See composite exhibits 107, 108, 109, accepted into evidence); therefore, the 42 U.S.C. §1983 remedies were triggered when Dr. Asam's liberty rights under the Fourteenth Amendment to the U.S. Constitution were violated by the Lee County School Board.

III. Whether trial judge violated 18 U.S.C. §1503 and his behavior resulted in an obstruction of justice when the trial judge verbally attacked the plaintiff in open court and before the press by stating "You are your own worst enemy" for no reason after he ruled on granting the motion for directed verdict for the Defendants, and he violated the First Amendment by abusing the freedom of speech and abused his authority; he also violated the 5th Amendment due proces of the U.S. Constitution since the Hon. judge

QUESTIONS PRESENTED (CONTINUED)

should have declared a mistrial or at least granted the motion of new trial which he denied before he recused himself from further proceedings: THEREFORE, the opinion by the U.S. Court of Appeals, Eleventh Circuit, was clearly wrong when the lower court stated, "Because the district court neither misapplied the law nor abused its discretion...", i.e. the Honorable trial judge abused his discretion to the extent he recused himself from further proceedings after he denied all post-trial motions (See APPENDIX E).

IV. Whether the Hon. trial judge violated the Plaintiff's rights under the Seventh Amendment to the U.S. Constitution when the trial judge bifurcated the trial into liability and damages issues and then he ruled the plaintiff did not prove damages when the judge had previously bifurcated the trial and would not allow evidence on damages and thus the Plaintiff/Appellant's right to a jury trial was violated since the trial judge

QUESTIONS PRESENTED (CONTINUED)

granted a directed verdict when the issues of stigmatization and malice in libel per se should have been before the jury?

V. The Plaintiff/Appellant incorporates into these Questions Presented in the Jurisdictional Statement the following questions presented to the U.S. Court of Appeals, Eleventh Circuit:

1. Whether trial court abused its discretion and was clearly erroneous in granting a directed verdict to Defendants who proved no affirmative defenses (especially #5) at trial, and whether trial court was clearly erroneous in denying JNOV of Plaintiff who made a Motion for Directed Verdict at the close of all the evidence, and whether trial court abused its discretion and was clearly erroneous in denying Motion for New Trial because the Plaintiff met all elements of prima facie case for liability issues of deprivation of Plaintiff's liberty interests without due process under the 14th

QUESTIONS PRESENTED (CONTINUED)

Amendment to the U.S. Constitution and pendant libel?

(a) Whether Plaintiff met all the elements of "stigma-plus" and libel i.e. was prima facie case put on by plaintiff at trial?

(1) Whether said unemployment form (P.Ex. 9) which was in Dr. Asam's personnel file, a public record, is false?

(a) Whether this false unemployment form (P.Ex.9) which was knowingly retained by the School Board in the teacher's personnel file of Dr. Asam, stigmatized Dr. Asam from obtaining any gainful employment as a teacher?

(b) Whether Lee County School Board knowingly keeping this false unemployment form (p. Ex. 9) in Dr. Asam's personnel file when said form on its face falsely stated, "Discharged for misconduct connected with work", was actual malice and libel per se and the trial court made a reversible error in law in the pendant libel per se issue i.e. libel

QUESTIONS PRESENTED (CONTINUED)

per se since Defendants refused to retract said false unemployment form from Dr. Asam's personnel file, a public record, after notice to retract and libel per se does not require proof of damages?

(2) Whether "stigma-plus" of Dr. Asam's teacher's reputation was shown in the evidence at trial because she was unable to obtain a teaching position for over seven (7) years? (See Plaintiff composite exhibits 107, 108, and 109, showing teaching positions Dr. Asam applied)?

(3) Whether publication of said false document- the unemployment form (P.Ex.9) stating, "Discharged for misconduct connected with work" in Dr. Asam's teacher's personnel file, is a public record according to Florida case law i.e. "publication per se" as well as publication to third persons?

(4) Whether any due process, triggered by Dr. Asam's deprivation of her liberty rights under the 14th Amendment to the U.S.

QUESTIONS PRESENTED (CONTINUED)

Constitution, was shown by Lee County School Board?

(5) Whether any damages due plaintiff as a matter of law since School Board failed to show any due process i.e. no notice of hearing; therefore, compensatory and punitive damages should be awarded for deprivation of liberty interest without due process under the 14th Amendment with remedy under 42 USCA §1983 and pendant libel per se with actual malice?

(B) Whether Defendants failed to meet burden of proof that shifted to Defendants to show affirmative defenses especially,

(1) Affirmative defense #5 - whether plaintiff discharged for misconduct?

(2) Whether Defendants had any type immunity by abusing privilege and sending false document in personnel file (P. Ex. 9) to EEOC?

2. Whether the trial court was clearly erroneous and made reversible error in law

QUESTIONS PRESENTED (CONTINUED)

by not allowing the jury to be trier of the facts in disputed issues at close of the evidence?

(A) Whether stigmatization of plaintiff's teacher's reputation to point plaintiff could not obtain a teacher's position in over seven (7) years when she had a Ph.D.?

(B) Whether plaintiff was discharged for misconduct since defendants failed to meet burden of proof in proving affirmative defense #5 i.e. Defendants did not prove Dr. Asam was discharged for misconduct?

Whether trial judge was clearly erroneous and abused its discretion by not allowing impeachment according to Federal Rules of Evidence #607 because not allowing impeachment prejudiced the plaintiff since impeachment goes to credibility of witness?

(A) Whether trial judge erred in not allowing plaintiff to recall witness, Mr. Waldron, after she reserved the right to recall witness when subsequent evidence was

QUESTIONS PRESENTED (CONTINUED)

presented that would impeach said witness and show him as untruthful?

(B) Whether trial court made clearly erroneous mistake and abused its discretion by not allowing plaintiff to impeach Mr. DeShazo when he answered "yes" to a question that he had previously answered 'no" in his deposition?

(1) Whether the judge was leading the witness in interpreting what to say when Mr. DeShazo answered "yes" to a "no" question?

(2) Whether the judge's unjudicial conduct in leading the witness and not allowing impeachment was detrimental to plaintiff and violated her substantive rights, justifing a new trial?

(3) Whether the judge's mentioning this instance with Mr. DeShazo again was trying to discredit the plaintiff?

4. Whether the trial judge erred in bifucating the trial (into liability and damages

QUESTIONS PRESENTED (CONTINUED)

issue) and then ruling the plaintiff did not prove damages and violated the Plaintiff's rights under the 7th Amendment to the U.S. Constitution?

5. Whether trial court abused its discretion by allowing the same judge to rule on motion to disqualify judge (himself) and then ruled on denying motion for JNOV and motion for new trial and after ruling, recused himself from further proceedings? (R4 166).

6. Whether trial judge abused his discretion and acted in unjudicial manner by stating to Dr. Asam "You are your own worst enemey" after he ruled on granting the motion for directed verdict for Defendants and in front of the public and press (R7 376 l. 8).

7. Whether the trial court made a reversible error in law by violating the Federal Rules of Evidence #404 when character was in evidence?

QUESTIONS PRESENTED (CONTINUED)

(A) Whether trial court made reversible error of law in refusing to allow introduction of relevant evidence when Dr. Asam's immediate supervisor, Mr. Pickett, had written a false and defamatory letter (P.Ex.10). Dr. Asam should have been allowed to question witnesses concerning Mr. Pickett's abusing minors at the school in the same year 1978 as he wrote his letter under Rule 404 (b), when Mr. Pickett was present at the evaluation meeting of Dr. Asam with Mr. Falk and Mr. Kreller; therefore, trial court prejudiced and violated substantive rights of plaintiff?

(B) Whether trial judge made reversible error in law by not allowing observations of Mr. Pickett into evidence (P. Ex. 49 and 50) because business records and evaluation was in evidence (D. Ex. 8) and Mr. Pickett was also present at Dr. Asam's evaluation meeting to allow her contract to expire and libel is an issue in this case.

QUESTIONS PRESENTED (CONTINUED)

8. Whether trial court made reversible error in law in dismissing Defendant School Board Members, individually since the School Board members knowingly ratified a false document to remain in a teacher's personnel file, a public record?

9. Whether trial court made reversible error and was clearly erroneous in not ruling according to law? Case law not followed:

(1) Dade County School Board v. Miami Herald Publishing Co. 443 So. 2d 268, DCA of Fla. 3rd Dist., 1983. Plaintiff offered xerox copy of this case to judge at trial and judge refused, reporter's transcript (R7 369 (1.) 15-17), when case clearly shows personnel file in school board in Florida for a teacher is a public record. Dade case cited by Dr. Asam (R7 368, 1. 23-24).

(2) Blanton v. Griel Memorial Psyciatric Hospital, 758 F. 2d 1540 (11th Cir., 1985) was cited by Dr. Asam (R7 369 1. 24,25), specifically showing the elements of a prima

QUESTIONS PRESENTED (CONTINUED)

facie case on p. 1544 of deprivation of liberty rights under 14th Amendment to the U.S. Constitution.

(3) Clemons v.Dougherty County, Georgia, 684 F. 2d 1365, (11th Cir. 1982) was cited by Dr. Asam (R7 372 l. 4-5) showing that the trier of the fact on stigmatization should be the jury.

(4) See Trial Brief for additional law presented by plaintiff to court (R4 156) since Hon. Judge did not allow Plaintiff to finish her argument or have equal time for argument before he granted Directed Verdict in favor of Defendants.

10. Whether the trial court abused its discretion and was clearly erroneous by allowing the same judge who ruled on motion to disqualify judge (himself) to rule on a motion to hold Mr. DeVore in contempt (R4 166)?

11. Whether trial court abused its discretion in not allowing completion of relev-

QUESTIONS PRESENTED (CONTINUED)

ant discovery (1) by not extending discovery cut-off (R3 96); (2) by not having a requested discovery conference (R4 152); (3) by not compelling School Board to produce documents timely requested relevant to case (R4 152); (4) by not compelling Lee County School Board to produce allege misconduct document when substituted production document sent to court (R3 95); (5) by not granting any sanctions to Lee County School Board for failing to produce said documents related to threshold issue of case i.e. no document showing Dr. Asam discharged for misconduct and producing other document totally unrelated to requested document (R4 152, R3 95); (6) by cutting discovery off 30 days before requested time needed and requested by status order (R2 78; R2 81); and (7) by cutting discovery off five (5) months before trial (R2 81)?

12. Whether trial court erred by not allowing Motions to Amend Complaint...(R2

QUESTIONS PRESENTED (CONTINUED)

87, and R2 93) after plaintiff discovered new evidence relating to issue in instant case "stigma-plus" and libel because new evidence added to Dr. Asam's personnel file (PEx.82), specifically (1) altered or exchanged "Request for Transfer" in Dr. Asam's personnel file (P. Ex. 82); (2) no documents produced by Defendants showing any alleged notice of misconduct or hearing by defendants; (3) Defendants attempted to "cover-up" production of papers showing Mr. Pickett was abusing minors at school in the same year 1978 (P.Ex.10) -- papers were obtained from State of Florida; (4) conspiracy of administrators Doran and Benton, keeping misleading document in personnel file attached to evaluation when the said document on face of it showed no misconduct. (See P. Ex. 82 3rd and 4th pages from end of ex. 82 bound). Doran testified evaluation document on the face of it does not show alleged misconduct (R7 281 l. 24-25;

QUESTIONS PRESENTED (CONTINUED)

R7 282 lines 1-2) and see R2 93); (5) Evidence showing personnel department of Lee County School Board made false and misleading statement to DOE in State of Florida; and (6) conspiracy and collusion of administrators regarding the listening and taping over intercom of Dr. Asam's class, March 3, 1978, i.e. after the fact, since March 1, 1978 was the date of evaluation?

13. Whether the trial judge abused his discretion in not allowing plaintiff to put on case first, when Hon. Judge gave Defendants permission in judge's chamber to put on the Defendant's case after each witness the plaintiff called?

14. Whether the trial court erred in denying the Motion to Strike the Defendants Directed Verdict and the trial court made a reversible error of law since the question of stigmatization should have been before a jury?

15. Whether the trial judge clearly made a reversible error in law by not allowing

QUESTIONS PRESENTED (CONTINUED)

plaintiff to state admissions of party opponent in opening statements or in allowing admisions into evidence under Federal Rules of evidence, Rule 801 (d)(2)?

16. Whether trial court made reversible errors of law by not admitting relevant documents into evidence at trial thus violating certain Federal Rules of Evidence? (See U.S. Court of Appeals, 11th Circuit, Appellant Brief for list of exhibits).

17. Whether the trial court abused its discretion in making plaintiff pay costs and/or the trial court was clearly erroneous by not awarding to plaintiff at least nominal damages, costs, interests and attorney fees spent because defendants have knowingly retained a false document (P.Ex.9) showing actual malice for 8 years in the teacher's personnel file of Dr. Asam when the teacher's personnel file in the State of Florida is a public record?

QUESTIONS PRESENTED (CONTINUED)

VI. The Plaintiff/Appellant incorporates the questions presented in her rehearing brief to the U.S. Court of Appeals, 11th Circuit in the Questions Presented in this Jurisdictional statement:

1. Does the Court have the jurisdiction to consider the law misapplied by the U.S. District Court, Middle District of Florida when the panel of this Court [U.S. Court of Appeals, 11th Circuit] failed to rule according to decisions of the Supreme Court of the United States and precedents of this Circuit and other Circuits since the Directed Verdict should have been reversed and the case remanded for new trial because the Honorable panel of this Court was relying on phantom documents of the Defendants/Appellee who listed Documents 33 and 34 in their Reply Brief in 86-3309 when in reality the documents 33 and 34 do not exists in the record and there is no corrected form in the Personnel File of Dr. Asam at the Lee County School Board? [The record will

QUESTIONS PRESENTED (CONTINUED)

show that Defendants exhibits only went to exhibith number 27 and there was no 33 or 34.]

(1) Whether the panel of the Court [U.S. Court of Appeals, 11th Circuit] failed to remand the case on the issue of stigmatization by Defendants maintaining a known false document (Plaintiff's exhibit 9) in the Personnel File of Dr. Asam when the Defendants had no written notice in the personnel file stating said false document was corrected and said stigmatization under 42 USC §1983 violated Dr. Asam's liberty rights under the 14th Amendment to the U.S. Consitution (See Exhibits of Plaintiff 107, 108, 109 for application for jobs), and the case should be remanded for a new trial by a jury according to Clemons v. Dougherty Counry, Ga., 684 F. 2d 1365 (11th Cir.1982).

(2) Whether the panel of the Court [U.S. Court of Appeals, 11th Circuit] erred on the issue of malice in the pendent libel

QUESTIONS PRESENTED (CONTINUED)

count which should have been tried by a jury and the case remanded for new trial according to Gertz v. Robert Welch, Inc. 680 F. 2d 527 (7th Cir., 1982).

(3) Whether the panel of this Court erred by not remanding the case for a new trial on the damages issues only since a prima facie case was presented by Plaintiff on (3) Whether the panel of this Court [U.S. Court of Appeals, 11th Circuit] by not remanding the case for a new trial on the damages issues only since a prima facie case was presented by Plaintiff on stigmatization according to Blanton v. Griel Memorial Hospital, 758 F. 2d 1540 (11th Cir., 1985)? See Appellant Brief 86-3142 pp. 9-19 and pp. 34-46.

2. Whether the Court [U.S. Court of Appeals, 11th Circuit] has jurisdiction to consider the question of abuse of discretion in the U.S. District Court, Middle District of Florida when the panel of this 11th Cir-

QUESTIONS PRESENTED (CONTINUED)

cuit failed to notice that the Hon. Judge Morgan attacked the plaintiff in open court in the U.S. Dist. Court, Middle Dist. of Florida, Fort Myers Division, (see Issue 6 p. 4 Appellant Brief 86-3142) when the judge said in open court "You are your own worst enemy" for no reason after he ruled on granting the motion for directed verdict for Defendants and in front of the public and press (R7 376 l. 8)? Therefore, there is no doubt about it that the Hon. Judge Morgan abused his discretion and the case should be remanded for new trial with an unbiased judge. Hon. Judge Morgan further abused his discretion when he denied the motion for new trial and motion for J.N.O.V. just before he recused himself from any further proceedings. (R4 166).

Other abuse of discretion by Hon. U.S. District Judge.

(1) Whether the panel of the Court [U.S. Court of Appeals, 11th Circuit] ignored an issue of first impression as an abuse of

QUESTIONS PRESENTED (CONTINUED)

discretion and violation of plaintiff's 7th Amendment right to a jury trial on issue of stigmatization and malice in libel when the Hon. Judge Morgan first bifurcated the trial into liability and damages issue (OK for judge discretion) but at the end of trial the judge decided without notice to Dr. Asam he was considering damages (R7 372 l. 18,19) in the first trial (abuse of discretion)? See Issue 4 on p. 4 and pp. 47 and 48 of Appellant Brief 86-3142.

(2) Whether the panel of the Court [U.S. Court of Appeals, 11th Circuit] erred in not noticing that an altered document was newly discovered by Plaintiff before trial since the former attorney failed to point out this altered document to plaintiff and there was abuse of discretion not to allow the Amended Complaint since the Defendants had been allowed Amendment to their Answers? See Issue 12 Appellant Brief.

QUESTIONS PRESENTED (CONTINUED)

(3) Whether the panel of the Court [U.S. Court of Appeals, 11th Circuit] erred in not considering the abuse of discretion of Hon. Judge Morgan when he did not allow the plaintiff to impeach Mr. DeShazo when he answered "Yes" to a Question that he had previously answered "no" in his deposition and the Hon. Judge Morgan was leading the witness in interpreting what to say? See Appellant Brief p. 3 and p. 46 - R6 88 l. 1-10). Therefore, the U.S. Court of Appeals, ignored the fact that the Honorable trial judge misapplied the law and clearly showed abuse of discretion and the case should have been remanded for new trial, and or in the alternative the motion for J.N.O.V. that was denied by the trial judge should have been reversed and the case remanded for the damages issue only in a trial.

PARTIES BELOW

The Plaintiff/Appellant is Julia McCain Lampkin Asam (Julia L. Asam).

The Defendants/Appellees are Lee County District School Board, Chairman, 2055 Central Ave., Fort Myers, Florida 33901; Mrs. Rayma C. Page, 2412 Kent Ave., Fort Myers, Florida 33907; Mr. Howard DeVore, 3173 Palm Beach Blvd., Fort Myers, Florida 33901; Mr. John William Mills, 2212 River Oak Lane S.E., Fort Myers, Florida 33905; Mr. John F. Beckett, 2925 Cortez Blvd., Fort Myers, Florida 33901; Mr. Robert L. Ratliff, 9464 Lakeview Blvd., North Fort Myers, Florida 33903; Mr. Ray V. Pottorf, 950 Aqua Lane, Fort Myers, Florida 33903; Mr. Vincent DeShazo, 5084 Westminister Dr., Fort Myers, Florida 33907 and the attorney for the Lee County District School Board (Lee County School Board) is Mr. Harry A. Blair, 2138-40 Hoople St., P.O. Box 1467, Fort Myers, Florida 33902.

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I. The Honorable Supreme Court of 40
the United States does have jurisdiction to review the instant case as an appeal under 28 U.S.C. §1254 (2) because the Honorable U.S. Court of Appeals, Eleventh Circuit (86-3142), by affirming the pendent libel per se count, was holding Florida Statute, 119.011(1), state statute invalid and repugnant to the U.S. Constitution, Amendments, I, V, and XIV, when the judge of the trial court erroneously di-

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rected a verdict concerning libel per se of Dr. Asam in a public record--teacher's personnel file of Dr. Asam at Lee County School Board.

II. The Honorable Supreme Court of the United States has jurisdiction under 42 U.S.C. §1983 because the U.S. Court of Appeals, Eleventh Circuit, erroneously affirmed the §1983 claim by the Eleventh Circuit, first misstated the facts (See APPENDIX B and discussion of facts this Brief) and then misapplied the law in its own circuit, (Clemons v. Dougherty County Georgia, 684 F. 2d 1365 (11th Cir. 1982) and the Blanton v. Griel Memorial Psychiatric, 758 F. 2d 1540, (11th Cir., 1985) i.e. the Lee County School Board deprived the liberty rights

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of Dr. Asam without due process under the 14th Amendment to the U.S. Constitution by Board stigmatizing and assasinating the teacher's reputation of Dr. Asam since 1978 due to the School Board retaining a false document (P.Ex.9) in her personnel file, a public record, which falsely stated "discharged for misconduct connected with work" when in reality there was no misconduct by Dr. Asam, and the said School Board failed to remove the said false document (P.Ex.9) after notice to remove (D. Ex.4 -letter by Dr. Asam dated May 7, 1982).

III. The U.S. Court of Appeals, Eleventh Circuit, was incorrect in their opinion (APPENDIX B) when the Court stated that there was no abuse of discretion when the judge of the trial court verbally attacked the plaintiff at trial 58

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when the judge yelled "You are your own worst enemy" for no reason and failed to allow impeachment under Federal Rules of Evidence, Rule 607, by the trial court judge interpreting a yes for a no answer (see pp. 37-38 this brief) and the trial court judge violated 18 U.S.C. §1503 by obstructing justice and violated Dr. Asam's first and fifth amendments rights of the U.S. Constitution; therefore, the case 86-3142 should have been reversed and remanded for new trial.

IV. The Hon. trial judge did violate 60
the plaintiff's rights under the 7th Amendment to U.S. Constitution when he bifurcated the trial into liability and damages issues and then without notice to plaintiff at the end of trial he, the judge, was considering damages in the

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STATEMENT REGARDING
ORAL ARGUMENT
AND REQUEST TO WRITE MERITS' BRIEF

Because of the complexitities, irregularities and numerous judicial errors made in the lower court, oral argument is requested so that the Honorable Justices can understand and ask questions.

The Plaintiff/Appellant respectfully requests to write the Merits' Brief.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

No. ___

Julia McCain Lampkin Asam, Ph.D., J.D.

Plaintiff/Appellant

vs.

LEE COUNTY DISTRICT SCHOOL BOARD: RAYMA C. PAGE, HOWARD DeVORE, JOHN WILLIAM MILLS, JOHN F. BECKETT, ROBERT L. RATLIFF, RAY V. POTTORF, AND VINCENT L. DeSHAZO

Defendants/Appellees

APPEAL FROM THE

UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

The instant case is a 42 U.S.C. §1983 action because the Lee County School Board through its agent, Mr. Vincent DeShazo, was acting under color of state law when he created the false unemployment form (P.Ex.

9) which on its face stated "discharged for misconduct connected with work" when there was no misconduct and Mr. DeShazo was under constructive notice there was no misconduct since he was the custodian of the personnel file of Dr. Asam at the Lee County School Board. Mr. DeShazo immediately after the Unemployment office called corrected the unemployment form (P. Ex. 11) which was NEVER in the personnel files of Dr. Asam at the Lee County School Board. Before this lawsuit, Lee County School Board was notified that a false document (P. Ex. 9) was in the Personnel file of Dr. Asam and were requested to remove said false document (P.Ex. 9). However, Mr. DeShazo failed to remove the file (P. Ex. 9) and failed to write a note and attach to the file that the said false document (P. Ex. 9) had been corrected at the unemployment office (P. Ex. 11 which was never in the personnel file of Dr. Asam). The point is the instant case which started as a mistake that was corrected at the un-

enployment office and not at the personnel file of Dr. Asam in the Lee County School Board escalated to stigmatization of Dr. Asam's teacher's reputation when the Lee County School Board acting under color of state law failed after notice to remove the said false unemployment document (P.Ex. 9) which on the face of the document stated, "discharged for misconduct connected with work" when there was no misconduct by Dr. Asam, and the Lee County School Board failed to attach a note to said false document (P. Ex. 9) stating that it was false and had been corrected at the unemployment office. This stigmatization of Dr. Asam's teacher's reputation was a violation of her liberty rights under the Fourteenth Amendment to to the U.S. Constitution and a violation of her due process rights under the Fourteenth Amendment to the U.S. Constitution.

The stigmatization liability issue and the libel per se malicious issue since the Lee County School Board was knowingly main-

taining a false document (P. Ex. 9) should have been decided by a jury; therefore, the Hon. Judge of the trial court erred by deciding the case on directed verdict when a prima facie case was presented by the plaintiff/appellant as shown in her Appellant Brief to the U.S. Court of Appeals, Eleventh Circuit.

The U.S. Court of Appeals, Eleventh Circuit made a gross error in the facts, claiming a correction of P. Ex. 9 stating falsely that Dr. Asam was "discharged for misconduct connected with work" when in reality the correction was only at the unemployment office (P. Ex. 11) and not at the personnel office of the Lee County School Board. Because the U.S. Court of Appeals, grossly misstated the facts the U.S. Court of Appeals, Eleventh Circuit, grossly misapplied the law, specifically law from its own circuit, Clemons v. Dougherty County, Georgia, 684 F. 2d 1365 (11th Cir. 1982)

which precluded the stigmatization issue not being decided by the jury; therefore, the Honorable trial judge made a reversible error by deciding the underlying case on directed verdict when a prima facie case was presented by the Plaintiff/Appellant (See Appellant Brief of the U.S. Court of Appeals, Eleventh Circuit, and the record). Further the same trial judge, Honorable Robert Morgan, denied the summary judgment against the Defendants and for the plaintiff on the basis of the same case, Clemons v. Dougherty County, Georgia, 684 F. 2d 1365 (11th Cir. 1982), but at trial erroneously directed a verdict on the same issues of stigmatization since the false document (P.Ex.9) in the personnel file of Dr. Asam prevented her from ever receiving a teaching position since 1978 when she has the highest qualifications, Rank I teacher's certification and Rank I in Administration from the State of Florida.

The Supreme Court of the United States has jurisdiction for appeal from the U.S. Court of Appeals, Eleventh Circuit, by affirming the U.S. District Court, Middle District of Florida's decision based on directed verdict, the U.S. Court of Appeals, Eleventh circuit, in the pendent libel per se claim, has held the Florida Statute,[1] 119.011(1) as invalid and repugnant to the U.S. Constitution under the First and Fourteenth Amendments to the U.S. Constitution since the personnel file of a teacher in the state of Florida is a public record, and therefore, libel per se was shown and should have had the issue of the pendent libel decided by a jury.

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[1]Dade County School Board v. Miami Herald Pub. Co. 443 So. 2d 268, DCA of Fla., 3rd Dist. 1983 was cited in the Appellant Brief by the Plaintiff/Appellant to the U.S. Court of Appeals, Eleventh Circuit and said case concerning records in a teacher's personnel file, the court held "We affirm the trial court's order, holding that the requested records are subject to disclosure under chapter 119 Florida statutes (1981) and that no lawful exemption impinged on Florida's broad public policy of access to government documents." (Emphasis added.)

In this introduction, it will be mentioned that the rights of Dr. Asam under the 7th Amendment to the U.S. Constitution was also violated by the Hon. trial judge because he first bifurcated the issues for separate trial for liability and damages, and at the end of the trial he considered damages (R7 372 l. 18,19).

The U.S. Court of Appeals, Eleventh Circuit, made a gross error by claiming that there was no abuse of discretion by the trial judge when the trial judge verbally attacked the plaintiff for no reason in open court and before the public and press by stating to Dr.Asam, "You are your own worst enemy". This statement by the trial judge, Hon. Robert Morgan, U.S. District Judge, not only is abuse of discretion but also is an abuse of Dr. Asam's rights under the First Amendment to the U.S. Constitution, as well as an obstruction of justice under 18 U.S.C. 1503 and a violation of Dr. Asam's rights of due process

in a trial under the Fifth Amendment to the U.S. Constitution since she did not have a fair trial.

This same trial judge, the Hon. Judge Robert Morgan, denied all the post-trial motions (particularly, JNOV and motion for new trial) (See APPENDIX E) and note that the trial judge recused himself from any further proceedings. (Appendix E p. 22a). Therefore, the trial judge should have declared a mistrial or granted the motion for new trial which he denied. There is no doubt about it that abuse of discretion was shown by the Hon. trial judge. (See Statement of Facts this Brief for other instances where the trial judge abused his discretion in the trial court of this instant case).

The instant case should be reviewed as an appeal based on the jurisdictional statutes presented below. However, if this instant case is not reviewed as an appeal, it should be reviewed as a Writ of Certiorari.

OPINIONS BELOW

On February 27, 1984, Honorable Judge Robert Morgan, filed "Order on Motion for Summary Judgment" in which he denied the Defendants' motion since the Honorable judge stated in his opinion that there remains as a "genuine issue of material fact, i.e, whether the "stigma-plus" test has been met. Such an issue prevents summary judgment under Rule 56, F.R.Civ. P. See also Clemons v. Dougherty County, Georgia, 684 F. 2d 1365, 1368 (11th Cir. 1982)..." (APPENDIX A)

On April 7, 1987, the U.S. Court of Appeals, Eleventh Circuit, affirmed the directed verdict of the U.S. District Court, Middle District of Florida in which the Honorable Judge based his directed verdict on the same issue, "stigma-plus" issue that he had denied summary judgment in February 27, and said opinion by the U.S. Court of Appeals, Eleventh Circuit is inconsistent with their own previous case, Clemons v.

Dougherty County, Georgia, 684 F. 2d 1365, 1368 (11th Cir. 1982). (See APPENDIX B for the U.S. Court of Appeals, Eleventh Circuit, opinion dated April 7, 1987).

On February 7, 1986 was filed the Judgment in the civil case 82-91 CIV F.M. 17 [the underlying case] which the Honorable Judge Robert Morgan granted a motion for a directed verdict in favor of defendants ... (See APPENDIX C).

See APPENDIX D from the transcript of the trial where the Honorable Judge Morgan denied a motion for directed verdict by the Plaintiff [February 4, 1986].

See in APPENDIX E that the Honorable Judge Morgan denied the Motions by plaintiff for new trial and JNOV. Also note in APPENDIX D that the Honorable Judge Morgan wrote in handwriting "The undersigned judge recuses himself from further proceedings in this case" after denying all post-trial motions.

Honorable Judge Elizabeth Kovachevich on April 10, 1986, denied the Defendants' mo-

tion for attorney's fees... (See APPENDIX F and also see APPENDIX B AND G and note the denial of attorney fees was affirmed by the U.S. Court of Appeals, Eleventh Circuit).

See APPENDIX G which is the JUDGMENT from the U.S. Court of Appeals, Eleventh Circuit, before RONEY, Chief Judge, HILL and KRAVITCH, Circuit Judges, and said judgment which is entered on April 7, 1987 affirms the judgments of the District Court.

See APPENDIX H which is the denial of the petition for rehearing and suggestion for rehearing en banc on July 22, 1987, the date the denial of the petition for rehearing ... was entered by the court by Paul H. Roney, United States Circuit Judge.

Therefore, this appeal is timely filed since the 90 days started running from July 22, 1987, the date the petition for rehearing ... was denied.

JURISDICTION

The jurisdiction of the Supreme Court of the United States to review the final judgment order of the U.S. Court of Appeals, Eleventh Circuit, is invoked under 28 U.S.C. §1254, as appeal or Writ.

The Supreme Court of the United States has jurisdiction under 28 U.S.C. §2106.

The Supreme Court of the United States has juridiction under 42 U.S.C. §1983 and 28 U.S.C. §1343(3).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution: Amendments I, V, VII, and XIV - "liberty and due process". (See APPENDIX I for quotes of Amendments.)

Federal Statutes:

42 U.S.C. §1983

28 U.S.C. §1503

28 U.S.C. §1254

28 U.S.C. §2106

28 U.S.C. §1343(3)

(See APPENDIX I for quotes.)

State

Florida Statute[2] 119.011(1)

(See APPENDIX I.)

Federal Rules of Evidence

Rules

801 (d)(2) Admission by party-opponent.

607 Who may Impeach - The credibility of a witness may be attacked by any party, including the party calling him.

404 - Character Evidence not Admissible to Prove Conduct; Exceptions - (1) Character of Accused. Evidence of a pertinent trait of his character offered by an accused [in instant case since pendent libel per se character evidence is permissible].

(See Appendix I.)

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[2]See Dade County School Board v. Miami Herald Pub. Co. 443 So. 2d 268, DCA of Fla., 3rd Dist. 1983 which held that a teacher's personnel file is a public record under Florida Statute 119.011(1). Therefore, keeping a false document (P. Ex. 9) in the personnel file of Dr. Asam at the Lee County School Board is a public record and is a publication since among others, the principals had access to the file and Dr. Asam's Request for Transfer was not granted because of the false document (P. Ex 9).

STATEMENT OF THE CASE

This appeal is concerning a case of deprivation of liberty rights without due process under the Fourteenth Amendment to the U.S. Constitution with redress under the 42 U.S.C.A. §1983 and pendent libel per se with actual malice.

The key to understanding the law in the case is to first understand the facts in the instant case.

The point is to understand what started as an alleged mistake (P. Ex. 9), created by Mr. Vincent DeShazo falsely stating that Dr. Asam had been "discharged for misconduct connected with work" when in reality Dr. Asam had not committed any alleged misconduct, and escalated to a stimatization issue in which Dr. Asam's liberty rights under the 14th Amendment to the U.S. Constitution were violated because there was NO CORRECTION IN HER PERSONNEL FILE and because her teacher's reputation was assassinated because there was no correction by Lee County School

Board of the false unemployment form in Dr. Asam's personnel file (P. Ex. 9), which on the face of it falsely stated "discharged for misconduct connected with work" when there was no misconduct committed by Dr. Asam. Lee County School Board refused to remove said false document (P. Ex. 9) after notice to remove (D. ex. 4) and Lee County School Board failed to write a note to the personnel file of Dr. Asam that there was no misconduct committed by Dr. Asam. Mr. DeShazo failed to state what misconduct Dr. Asam was alleged to have committed. Mr. DeShazo had constructive notice there was no alleged misconduct in Dr. Asam's personnel file at the Lee County School Board until Mr. DeShazo created and wrote (P. Ex. 9).

The unemployment office through Ms. Jack telephoned Mr. DeShazo on June 1978, and Mr. DeShazo corrected the false unemployment form (P.Ex. 9) only at the unemployment office (which is P. Ex. 11) and said cor-

rection (P. Ex. 11) was NEVER in the per-file of Dr. Asam. There was NO DOCUMENT in the personnel file of Dr. Asam which on the face of it stated that it was a correction for P. Ex. 9 or there was no form in the personnel file that stated that Dr. Asam did not commit any alleged misconduct. Therefore, Mr. Blair's PHANTOM DOCUMENT #34 was non existent and mislead the U.S. Court of Appeals, Eleventh Circuit, in mistating the facts since there is no correction that was ever stated on the face of any document in the personnel file of Dr. Asam. If the U.S. Court of Appeals, Eleventh Circuit had read the facts in the Appellant Brief by Plaintiff/ Appellant and if the exhibits had been checked, specifically P. Ex. 9 the false document containing the statement "discharged for misconduct connected with work" which was in the personnel file of Dr. Asam which is P. Ex. 82, it would be noted that P. Ex. 11 was not in P. Ex. 82, the personnel file

of Dr. Asam, maintained by the Lee County School Board. (This mistake in the facts would have been cleared up if there had been oral argument in the U.S. Court of Appeals, Eleventh Circuit).

The bottom line is that the U.S. Court of Appeals, Eleventh Circuit was notified that Mr. Blair's document #34 in his Reply Brief to the consolidated case 86-3309 was non-existent (see docket sheets of the U.S. Court of Appeals, Eleventh Circuit, for Memorandum by Dr. Asam after the filing of the Defendants' Reply Brief by Mr. Blair, writing about a non-existent "PHANTOM DOCUMENT #34" when the highest document in the exhibits by the Defendants is exhibit 27 (R4 NR 154 EXHIBIT LIST by Deft.).

Therefore, the statement by the Honorable panel of the U.S. Court of Appeals, Eleventh Circuit, on p. 3 of their opinion which states above, (see APPENDIX B),

..."mailed a corrected form on June 21. Copies of both forms were placed in Asam's

personnel file.." is an incorrect statement of the facts. See Docket Sheet of U.S. Court of Appeals, Eleventh Circuit, for Memorandum filed by Plaintiff/Appellant on September 12, 22, 25 (entered 26), and on October 10 and 14, 1986 explaining Mr. Blair's deceptive practice and that there was no corrected unemployment form in Dr. Asam's personnel file.

Note the form in question on June 21 was stamped received June 21, 1978 by PERSONNEL and the said form was mailed from the unemployment office to Lee County School Board c/o Personnel Director and was mailed on 6/19/78 and is entitled REIMBURSABLE. (See P. Ex. 82 index p. 2 and the said REIMBURSABLE is listed as item 62 by the Lee County School Board index and no mention is made of any corrected form for P. Ex. 9, the false unemployment form stating that Dr. Asam was "discharged for misconduct connected with work" when there was no misconduct. The Reimbursable form does not state on the face of it that it is a corrected form.

On May 7, 1982 before filing the instant underlying case, a demand was made to the Lee County School Board to remove said false unemployment form from the Personnel File of Dr. Asam (See Exhibit 4 of Defendants'

The point is the U.S. Court of Appeals, Eleventh Circuit was mislead by the phantom document #34 by Mr. Harry Blair, attorney for the Lee County school Board in his Reply Brief in the related case 86-3309 consolidated with 86-3142.

The Plaintiff/Appellant incorporates and adopts the facts clearly stated by the Honorable trial judge, Judge Robert Morgan, in his opinion denying the defendants summary judgment which states, (APPENDIX A).

"Although the plaintiff requested the school board to retract the unemployment form as false, a copy of the uncorrected initial form is alleged to remain in the plaintiff's permanent personnel file. The plaintiff asserts that the defendants' communications, as well as their failure to correct the false statement, resulted in a violation of

her liberty interest in her reputation as guaranteed by the Fourteenth Amendment to the United States Constitution." (Emphasis added.)

The point is the same Judge of the U.S. District Court that denied the Summary Judgment for Defendants, granted a Directed Verdict for Defendants on the same facts i.e. stigmatization issue (R2 58 1-3) [see APPENDIX A] when the summary judgment is precluded by Clemons v. Dougherty County, Georgia, 684 F. 2d 1365 (11th Cir. 1982).

In reference to the issue of whether the "stigma-plus" test has been met, the trial court judge stated in his opinion [see APPENDIX A] denying the Summary Judgment of Defendants (R2 58 3),

"Accordingly, the defendants' motion must be denied." (Emphasis added.)

The Appellant Brief of Plaintiff/Appellant states the same facts as the Hon. Judge of U.S. District Court (R2 58 2 - 1st paragraph). [See Appellant Brief pp. 9-12 concerning falsity of p. Ex. 9, the original uncorrected unemployment form that was re-

tained in Dr. Asam's personnel file -- also see P. Ex. 82].

The directed verdict granted to Defendants should be reversed and the JNOV or the Motion for New Trial should be granted for the Plaintiff/Appellant because a prima facie case was presented at the trial in the U.S. District Court, Middle District of Florida, Fort Myers Division as shown in the Appellant Brief to the U.S. Court of Appeals, Eleventh Circuit with reference to the record. These facts on the prima facie elements are presented in this instant brief before the Honorable Supreme Court of the United States.

A prima facie case was shown by plaintiff/appellant showing elements of "stigma-plus" and libel per se with malice at trial.

1. Falsity element.

Defendant, Mr. DeShazo, who was Personnel Director of the Lee County School Board in 1978, either alone or with the direction of Mr. Cecil Waldron who stated at trial, (R6 25 l. 13-14),

"Did you direct Mr. DeShazo to mark this number two?

...It's possible that I did. (Emphasis added.)

marked #2 of the said unemployment form (P. Ex. 9) which stated, "Discharged for misconduct connected with work". Mr. DeShazo admitted,

"I'm saying that I inadvertently did it." (Emphasis added.) (R6 84 l. 18-20).

Mr. DeShazo corrected the said false unemployment form (P. Ex. 9) by phone (R6 66 1.3), immediately (R6 89 l. 15-16) at the unemployment office. (See P. Ex. 11). [This P. Ex. 11 correction was NEVER in the Personnel File of Dr. Asam at Lee County School Board]. At trial Mr. DeShazo (R6 86 l. 2-26) read the pertinent part to Plaintiff's exhibit 11, the correction of item #2 at the unemployment office only,

> "Local Office Comments: Contacted Mr. DeShazo by phone this date. He stated client was not discharged for misconduct... (Emphasis added.)

The bottom line is Mr. DeShazo corrected the false unemployment form (P. Ex. 9) at the unemployment office (see P. Ex. 11) but Mr. Deshazo failed to attach a note of correction to Plaintiff's exhibit 9 which he retained in Dr. Asam's personnel file.

Mr. DeShazo made no effort to dispose of the false unemployment form (P. Ex. 9) in R6 1. 4-5. Mr. Benton who was the personnel director after Mr. DeShazo retired, retained the said false unemployment form in Dr. Asam's personnel file (P. Ex. 9) for over seven (7) years, including Feb. 4, 1986, date of trial, (R7 284 1. 17-25; R7 285 1. 1-6).

Mr. Pottorf, superintendent of Lee County School Board in 1978, stated at trial,

"Dr. Asam was not discharged for misconduct," (Emphasis added.)

Both Mr. Hogg, Principal (R6 155 1. 8-10) and Mr. Falk, acting Principal, (R6 169 1. 1-3) testified that Dr. Asam was not charged

by them for misconduct.

Mr. Waldron, assistant superintendent, testified in R6 34 l. 3-7,

Yet, the false unemployment form (P. Ex. 9) which on the face of the document, states about Dr. Asam, "Discharged for misconduct connected with work" when no witness at the trial stated Dr. Asam was discharged for misconduct (R7 373 l. 25).

Therefore, the element of falsity -- i.e. keeping a <u>false</u> unemployment form (P. Ex. 9) in the personnel file of Dr. Asam is clearly established for <u>stigmatization</u> and violation of Dr. Asam's liberty rights under the 14th Amendment to the U.S. Constitution, thus triggering the redress for remedies under the 42 U.S.C.A. §1983.

The element of <u>falsity</u> has been established also for the pendent <u>libel per se</u> -- keeping a known false document (P. Ex. 9) in the personnel file of Dr. Asam that is derogatory to her profession of teaching which is falsity on the face of the document when it states,

"Discharged for misconduct connected with work" and in reality there was no misconduct, and shows actual malice since Mr. DeShazo knew his statement was a mistake (R6 96 l. 7-8), and he inadvertently did it (R6 84 l. 18-20) i.e. carelessly and recklessly did it when Mr. DeShazo had constructive notice of no misconduct of Dr. Asam since he was custodian of the personnel file of Dr. Asam at the Lee County School Board in 1978.

Mr. DeShazo knew he was keeping a false document in the personnel file of Dr. Asam, (R6 96 l. 4-5) since he had corrected the same unemployment form (P. Ex. 9) at the unemployment office (P. Ex. 11) which was NEVER in the personnel file of Dr. Asam. However, Mr. DeShazo failed to attach a note of correction or remove said false unemployment form (P. ex. 9) from the personnel file of Dr. Asam. Therefore, the U.S. Court of Appeals, Eleventh Circuit, [see APPENDIX B] incorrectly stated the facts in the in-

stant case because there was NEVER a correction to P. ex. 9 in the personnel file of Dr. Asam at the Lee County school Board.

Lee County School Board, officially and individually, knowingly retained the false unemployment form (P. Ex. 9) in the personnel file of Dr. Asam after receiving a retraction letter written by Dr. Asam dated May 7, 1982 (D. ex. 4).

2. Stigmatization element.

Mr. deShazo knew or should have known that keeping said false document (P. Ex. 9) in the personnel file of Dr. Asam's, a teacher, would certainly stigmatize her in obtaining any teaching positions in Lee County in her "Request for Transfer" or anywhere in the State of Florida, or elsewhere. See composite exhibits 107, 108 and 109 accepted into evidence clearly showing all teaching positions Dr. Asam attempted to obtain; thus, showing the element of stigmatization in preventing Dr. Asam from obtaining gainful employment as a teacher because of the false unemployment

form (P.Ex.9) in Dr. Asam's personnel file, a public record. See Dade County School Board v. Miami Herald Pub. Co. 443 So. 2d 268, DCA of Fla., 3rd Dist. 1983 which held that a teachers personnel file was a public record under Florida Statute 119.011(1). Therefore, maintaining a false document in the personnel file of a teacher in the state of Florida is a publication because the said file is a public record. Because the principals of the Lee County School Board had access to Dr. Asam's personnel file she did not receive a job through her "Request for transfer" -- this is stigmatization. Request for transfer is in P. Ex. 82.

The record clearly shows how stigmatization of teachers takes place at the Lee County School Board as shown by the Chairman of the Board, Mrs. Jayma Page in her summary deposition accepted into evidence at the trial as P. Ex. 154. Mrs. Page's scenario (quoted below) shows how the stigmatization works

when a teacher has a bad record in the personnel file blocking the teacher from obtaining a teaching position. This false document (P. Ex. 9) definitely stigmatized Dr. Asam in her "Request for Transfer". (See P. Ex. 82). Mrs. Rayma Page stated in her deposition (P. Ex. 154) on pp. 37-38 and quoted in R7, 273-274) concerning the changing in the personnel file of a teacher, from a good evaluation to a poor evaluation by a principal without the teacher's knowledge.

See Plaintiff's exhibit 154 p. 371. 17-22 and R7 274 l. 5-6,

"Question: "How did she find out about the changed evaluation?
Answer:...she kept applying for a job and she kept thinking whe was going to get hired, and then she didn't. So, she asked to see her record, and she got --she kept applying at different schools --
...word of mouth got around and she didn't get hired.. (P. ex. 154, p. 37 l. 25).
...One principal had obviously looked at her records and said I can't hire you because your record is bad. She finally had enough presence of mind to go look at her record and see what was in there, and that's how she found out. (P. Ex. 154, p. 38, l. 14-17).

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...She looked at her file and she found this poor evaluation, which was something she didn't know about. (P. Ex. 154, p 38, l. 4-6).

According to this scenario by Mrs. Page, if a principal can change a teacher's evaluation from a good record to a poor record, Mr. DeShazo could have removed the false unemployment form (P. Ex. 9) created by him and substituted a correct unemployment form of the same type which Mr. DeShazo did not do after notice to remove false document (p. Ex. 9). (See P. Ex. 4, letter by Dr. Asam to Lee County School Board).

3, Publication and "publication per se" element.

Lee County School Board published this false document (P. Ex. 9) when Mr. Pottorf sent the personnel file of Dr. Asam to the EEOC (R7 258, l. 10-12). There is no privilege to send a false document to a third person.

Mr. Neugebauer, Executive Director of TALC (Teacher's Association of Lee County) testified that the teacher's personnel file is a public record, (R6 74, l. 4-6).

The fact that a false document was knowingly retained in the teacher's personnel file is a public record, (R6 74, l. 4-6).

The fact that a false document was knowingly retained in the teacher's personnel file, which is a public record according to Dade County School Board v. Miami Herald Pub. Co., 443 So. 2d 268, DCA of Fla., 3rd Dist. (1983), the keeping of a false document in a teacher's personnel file in Florida is "publication per se" since the teacher's personnel file is a public record. In the instant case the keeping of a false document in a teacher's personnel file falsely acusing the teacher of misconduct connected with work is "LIBEL PER SE" and does not require proof of damages. (See Gertz v. Robert Welch, Inc., 680 F. 2d 527 (7th Cir. 1982). Therefore, the Hon. trial judge made a reversible error in law by not allowing the case to go to the jury on the issue of the pendent libel per with malice since the Lee County School Board was knowingly maintaining a false document

in the personnel file of Dr. Asam (See New York Times Co. v. Sullivan 273 Ala. 656, 144 So. 2d 25 (1962), 376 U.S. 254 (1964).

4. Lack of due process by Lee County School Board element.

Since Lee county School Board violated Dr. Asam's liberty rights under the 14th Amendment to the U.S. Constitution, Dr. Asam's due process rights were triggered (See Brown v. Reno, 584 F. Supp. 504, (1984). Lee County School Board failed to show any due process to Dr. Asam after violating her liberty rights under the 14th Amendment to the U.S. Constitution.

5. Damages element.

In the liability issue of pendent libel per se, Dr. Asam did not have to prove damages according to law (see Gertz v. Robert Welch, Inc., 680 F. 2d 527 (7th Cir. 1982). Therefore based on the pendent libel per se alone, the instant case should have been decided on the malicious libel per se because the Lee County School Board was knowingly main-

taining a false document (P.Ex.9) in the personnel file of Dr. Asam and the jury should have decided the compensatory and punitive damages in the pendent libel per se issue.

In the liability issue of violation of the liberty rights of Dr. Asam under the 14th Amendment to the U.S. Constitution without due process by the School Board (i.e. no notice or hearing of alleged misconduct), Dr. Asam met all the elements of prima facie case (see above) and Lee County School Board failed to prove any affirmative defenses at trial (R7 370 l. 8-10). Therefore, Dr. Asam should have received both compensatory and punitive damages under 42 USC §1983 i.e. the directed verdict should be reversed and the JNOV granted for plaintiff or a new trial should be granted with a jury to decide the liability issues and the damages of compensatory and punitive damanges.

The Hon. trial judge made a reversible error in law since Dr. Asam did not have to

prove damages in the libel per se pendent claim. The instant case, should be reversed as a matter of law (See Gertz v. Robert Welch, Inc. 680 F. 2d 527 (7th Cir. 1982), and remanded to the U.S. District Court, Middle District of Florida, to impanel a jury to determine the amount of the damages, i.e. compensatory and punitive damages.

At the time of writing the appeal brief to the U.S. Court of Appeals, Eleventh Circuit the Lee County School Board owed Dr. Asam the following compensatory damages based on calculation of equivalent pay for Ph.D., she would have received for 8 years a total of $225,912.00, and is based on the 1985-86 Instructional Salary Schedule (this amount will be updated as soon as the 1987-88 salary schedule is known by plaintiff/appellant), published by School Board of Lee County. Dr. Asam would have been paid for the next 15 years before retirement age $419,835.00. Dr. Asam would have been paid $188,000.00 retire-

ment. The total compensatory damages are $813,747.00. Dr. Asam should also be paid interests, costs, and attorney fees spent. The jury would determine the amount of the punitive damages.

The Hon. Judge clearly violated Dr. Asam's 7th Amendment rights to a fair and impartial jury trial because the Hon. Judge had bifurcated the case (see R7 329 l. 21, when Mr. Blair was speaking of the Bifurcation rule trying to keep out exhibits 107, 108, 109, which were accepted into evidence.) The Hon. Judge stated to Dr. Asam not to discuss damages in the liability issue trial. However, at the end of the liability issue trial the Hon. Judge agreed with Mr. Blair and granted a Directed Verdict in favor of Defendants -- the Hon. Judge on R7 372 l. 18,19,21-23. This bifurcating the case into liability and damages issues and then, the Hon. Judge at the end of the trial deciding without notice to Dr. Asam that he, the judge was considering

damages in the first trial, and that he would only consider the amount in another trial (R7 373 l. 1-3) -- thus, the Hon. Judge violated Dr. Asam's rights to a jury trial under the 7th Amendment to the U.S. constitution.

This changing back to two issues without notice at the end of the trial is clearly an abuse of discretion by the Honorable trial judge, (i.e. liability and damages issues).

A gross error was made by the U.S. Court of Appeals, Eleventh Circuit, claiming in their opinion (See APPENDIX B) that there was no abuse of discretion by the trial judge when the trial judge verbally attacked the plaintiff for no reason in open court and before the public and press by the judge stating to Dr. Asam, "<u>You are your own worst enemy</u>". This statement by the trial judge, Honorable Robert Morgan, U.S. District Judge,

not only is abuse of discretion but also is an abuse of Dr. Asam's rights under the First Amendment to the U.S. Constitution, as well as an obstruction of justice under 18 U.S.C. 1503 and a violation of Dr. Asam's rights of due process in a trial under the Fifth Amendment to the U.S. Constitution since she did not have a fair trial.

The same trial judge, the Hon. Judge Robert Morgan, denied all the post-trial motions (particularly, JNOV and motion for new trial) (See APPENDIX E p. 22a). Therefore, the trial judge should have declared a mistrial or granted the motion for new trial which he denied. This verbal attack by the trial judge stating to the plaintiff "You are your own worst enemy", is clearly an abuse of the trial court's discretion when the trial judge recused himself from any further proceedings after denying all the post-trial motions.

The Honorable trial judge made numerous evidentiary errors which was an abuse of discretion. In particular the trial judge

interrupted the plaintiff when she was presenting admissions by party opponent in the opening statement and would not allow admissions. (violating F.R.Evid. 801(d)(2). The plaintiff was successful in reading at trial the most important admission which is found in R7 321 l. 23-24, and R7 322 line 1).

> "Number 75, "Do you admit that you never sent Dr. Asam a letter or given her any evaluation or observation stating that she was discharged for misconduct, and you admitted it"...

The Honorable Judge of the trial court did not allow the plaintiff to impeach a witness and participated himself by putting words in the witness mouth and obstructing justice under 18 USC §1503.

The Hon. trial court judge did not allow the plaintiff to impeach when Mr. DeShazo answer <u>yes</u> when the answer should have been <u>no</u> according to his deposition. The Hon. Judge made a clearly reverislbe error in law as well as abused his discretion and acted in an unjudicial manner interpreting a <u>yes</u> to be a <u>no</u> and did not allow plaintiff to

impeach the witness (violating F.R. Evid. Rule 607).

> See R6 87 l. 10-18 quoted, Question, Okay. I'm going to ask you the same question Mr. DeShazo and see how you answer. It says, "But you didn't mean to imply she was discharged because of misconduct, or her contract was allowed to expire because of misconduct?" How do you answer that? Answer: "Yes, that is true." Asam: "Your Honor, this is a direct opposite of what he said before and I'd like to offer this as impeachment and I do offer this. He says no on here."

See R 88 l. 1-10, showing the Hon. Judge interpreting a yes answer to be a no answer and the Hon. Judge was clearly erroneous in not allowing the impeachment to show the credibility of the witness. The Court stated, By the Hon. Judge,

> "I see it and I see exactly where you are and the witness is certainly correct that no answer -- At the present time, the No answer on the deposition is exactly what he said today, namely yes, I didn't mean to imply either one of those things, and he didn't mean to imply that she was discharged because of misconduct or that her contract was allowed to expire because of misconduct. He said no at that time meaning that he didn't. He said yes, that's correct today meaning that he didn't."
> R6 88 l. 1-10.

The Hon. Judge made a reversible error in

law i.e. Federal Rules of Evidence #404 when character was in evidence because the issues were libel and stigmatization when the trial judge failed to allow plaintiff to question witnesses about Mr. M. Pickett's, Dr. Asam's supervisor, when Mr. Pickett had abused minots at the school in the same year, 1978. (See P. Ex. 10, a false and defamatory letter by Mr. Pickett to Dr. Asam.) R6 170 1.19-25.

The trial court erred by not allowing the revised amended complaint concerning such issues as "cover-up" and altered and exchanged documents since added to Plaintiff's personnel file (P. Ex. 82 pp. 101 and 102). See p. xvi #12 for a detail on revised amended complaint. The order R3 96(1) should be revered if new trial.

Board deprived Dr. Asam of liberty interest without due process because Dr. Asam was given no notice and no hearing concerning the false document P.Ex.9 in her personnel file at the Lee County School Board. See R7 265 1.11-12.

ARGUMENT AND SUBSTANTIALITY OF QUESTIONS

I. The Honorable Supreme Court of the United States does have jurisdiction to review the instant case as an appeal under 28 U.S.C. 1254(2) because the Honorable U.S. Court of Appeals, Eleventh Circuit (86-3142), by affirming the pendent libel per se count, was holding Florida Statute, 119.011(1), state statute invalid and repugnant to the U.S. Constitution, Amendments One, Fifth, and Fourteenth, when the judge of the trial court erroneously directed a verdict concerning the libel per se of Dr. Asam in a public record. According to Florida Statue, 119.011(1) a teacher's personnel file in a School Board is a public record. See Dade County School Board v. Miami Herald Pub. Co. 443 So. 2d 268 (DCA of Fla. 3rd Dist., 1983, which was cited showing personnel file of teacher is public record in Appellant brief (86-3142) to the U.S. Court of Appeals, Eleventh Circuit. Therefore, according to Florida Statute 119.011(1) the teacher's personnel file

of Dr. Asam located in the Lee County School Board is a public record and said public record, the teacher's personnel file of Dr. Asam, contains a false unemployment form (P. Ex. 9), which on the face of the document "discharged for misconduct connected with work". when there was no misconduct by Dr. Asam was libel per se. The Lee County School Board knowingly and acting under color of state law, after notice of falsity, (D. Ex. 4, a letter by Dr. Asam dated May 7, 1982), maliciously retained a known false document (P. Ex. 9) in the teacher's personnel file of Dr. Asam. See New York Times Co. v. Sullivan 273 Ala. 656, 144 So. 2d 24, 376 U.S. 254 (1964) which defines malice in libel as known falsity. Also see Gertz v. Robert Welch, Inc. 680 F. 2d 527 (7th Cir. 1982) that the issue of malicious libel per se should have been before the jury and not decided by directed verdict since in libel per se damages are presumed.

By the Honorable U.S. Court of Appeals,

Eleventh Circuit, affirming the libel per se claim on directed verdict was clearly erroneous and reversible error since the U.S. Court of Appeals, Eleventh Circuit, by affirming the trial court on the libel se issue was holding the Florida Statute 119.011(1) as invalid because the teachers's personnel file was a public record and thus a permanent publication of the said false document (P. Ex. 9). Therefore, by the the Lee County School Board maintaining the false document in Dr. Asam's personnel was a violation of her rights under the First Amendment to the U.S. Constitution because the Lee County School Board abused the freedom of speech by keeping this false document (P. Ex. 9) after notice to remove from files because of its falsity and is malicious libel per se and the instant case on the libel per se issue should have been decided by a jury and not by a directed verdict. Therefore, the U.S. Court of Appeals, Eleventh Circuit, by

holding this Florida Statute, 119.011(1) by affirming after notice that the teachers personnel file was a public record in the case cited in the Appellant Brief, Dade County School Board v. Miami Herald Pub. Co. 443 So. 2d 268, DCA of Fla., 3rd Dist. 1983, invalid, i.e. U.S. Court of Appeals, Eleventh Circuit, was ignoring Florida Statute, 119.011(1) and holding a state statute invalid and was repugnant to the U.S. Constitution, Amendments One, Fifth, and Fourteenth. As stated above the repugnance to the First Amendment is due to the fact that the issue is malicious libel per se that should have gone to the jury. The Fifth and Fourteenth Amendments to the U.S. Constitution are violated because the U.S. Court of Appeals, Eleventh Circuit, by affirming the case and grossly misstating the facts (see APPENDIX B) because there was NEVER a correction in the personnel files of Dr. Asam which on the face of the document stated it was a correction for the false document (P. Ex.

9) which falsely stated "discharged for misconduct connected with work", the due process rights under the Fifth and Fourteenth to have a fair trial as well as the liberty rights under Fifth and Fourteenth Amendments by maintaining this libel per se concerning Dr. Asam's teaching reputation was an assassination of the professional reputation so that she never received a teaching position since 1978 after numerous attempts (See composite exhibits accepted into evidence numbers 107, 108, and 109). Because the U.S. Court of Appeals, Eleventh Circuit, did not understand the facts as evidence in the opinion (see APPENDIX B) because there was NEVER a corrected form in the personnel file of Dr. Asam, the U.S. Court of Appeals, Eleventh Circuit, did not rule according to law and by affirming a malicious libel per se claim that was in a public record, teacher's personnel file of Dr. Asam, the U.S. Court of Appeals, Eleventh Circuit, held a state statute, Florida Statute

119.011(1) invalid and was repugnant to the U.S. Constitution Amendments One, Fifth, and Fourteenth. This erroneous decision by the U.S. Court of Appeals, Eleventh Circuit, is contrary to principles of the U.S. Constitution, First Amendment, when the Lee County School Board after notice, was knowingly which is malice according to the New York Times v. Sullivan, supra an abuse of freedom of speech under the First Amendmend for the Board to retain the false form. See Gertz v. Robert Welch, Inc., supra.

Therefore, under this Question One Presented the Honorable Supreme Court of the United States has jurisdiction to review the instant case as an appeal under 28 U.S.C. 1254(2).

II. The Honorable Supreme Court of the United States has jurisdiction under 42 U.S.C. §1983 because the U.S. Court of Appeals, Eleventh Circuit, erroneously affirmed the §1983 claim when Dr. Asam met all the elements to maintain a cause of action under §1983 as stated

in Pepper v. Alexander, 599 F. Supp. 523, (10th Cir. 1984). The Lee County School Board acted under color of state law by retaining the false unemployment document (P.Ex.9) in the personnel file of Dr. Asam, when the said file was a public record according to Florida Statute 119.011(1) and said false document stated on the face of it "discharged for misconduct connected with work" when in reality there was no misconduct by Dr. Asam, and the Lee County School Board refused to remove said false document (P.Ex.9) after notice (D.Ex.4 letter by Dr. Asam dated May 7, 1982), and the Lee County School Board failed to write a note to the personnel file stating that the said false document was a mistake. Mr. Vincent DeShazo, Director of Personnel, and agent for Lee County School Board only corrected the false unemployment form at the unemployment office, (P.Ex.11, but this corrected form P.Ex. 11 was NEVER in the personnel file of Dr. Asam (P.Ex.82).

Therefore, the facts were misstated by the U.S. Court of Appeals, Eleventh Circuit in their opinion (Appendix B), because what started as a mistake, escalated to stigmatization when the Lee County School Board retained the false document (P.Ex.9) in the personnel file of Dr. Asam, a public record, according to Dade County School Board v. Miami Herald Pub. Co., supra, and said false document (P. Ex.9) permanently assassinated Dr. Asam's teacher's reputation and prevented her from obtaining a teaching position anywhere since 1978; therefore, Dr. Asam's liberty rights under the Fourteenth Amendment to the U.S. Constitution was violated.

The Plaintiff/Appellant met the elements of color of state law when the Lee County School Board failed to remove said false document (P.Ex.9) or add any note to the file that the false document (P.Ex.9) was incorrect. The element of violation of a constitutional right was certainly met when a libelous per se statement was maintained

in the personnel file of Dr. Asam when the said file was a public record according to Florida Statute 119.011(1) (see Dade County School Board v. Miami Herald Pub. Co., supra).

The U.S. Court of Appeals, Eleventh Circuit, erroneously affirmed the directed verdict of the trial court because the Honorable U.S. Court of Appeals ruled inconsistent with previous cases in its own circuit --Eleventh Circuit, specifically Blanton v. Griel Memorial Psychiatric Hospital, 758 F. 2d 1540, (11th Cir. 1985) and Clemons v. Dougherty County, Georgia, 684 F. 2d 1365 (11th Cir. 1982) because the Defendants of Lee County School Board et al. did violate the liberty rights of Dr. Asam under the Fourteenth Amendment to the U.S. Constitution because the original mistake by Mr. DeShazo creating a false document (P.Ex. 9) when he was custodian of the personnel files of teachers and had constructive notice that Dr. Asam had not been discharged for misconduct connected with work, this said mistake escalated to stigmatization

of Dr. Asam's teacher's reputation when the Lee County school Board refused to remove the said false document (P.Ex.9) after notice and the Lee County School Board failed to place any note on P. Ex. 9 that the School Board retained in Dr. Asam's personnel file, a public record (See Dade County School Board v. Miami Herald Pub. Co. supra).

The point is the U.S. Court of Appeals, Eleventh Circuit, (APPENDIX B) made a gross error and mistated the facts because there was no correction in the personnel file of Dr. Asam that stated it was a correction for the false document (P. Ex. 9). The Defendants' attorney mislead the U.S. Court of Appeals, Eleventh circuit, and the Honorable U.S. Court of Appeals, Eleventh Circuit failed to carefully review the bound personnel file of Dr. Asam (P.Ex.82) and note that the P.Ex. 11, the correction of the P.Ex.9 ONLY at the unemployment office and NEVER in the personnel file of Dr. Asam. This mistake would not have been made if oral argument had been requested.

Mr. Harry Blair, who was attorney for the Lee County School Board intentionally mislead the Eleventh Circuit by writing about a document #34 which was a phantom document, i.e. non existent since the defendants exhibit list only went to #27 (see R4 154). The U.S. Court of Appeals, Eleventh Circuit, was notified of this non-existent document in a Memorandum to the Court (see Docket sheets of the U.S. Court of Appeals, Eleventh Circuit, after the Reply Brief to the consolidated case 86-3309).

If the U.S. Court of Appeals, Eleventh Circuit had carefully studied the record as the Plaintiff/Appellant pointed out in the Appellant Brief it would have been seen there was no correction in the personnel file of Dr. Asam instead of taking the word of the attorney for the Lee County School Board without checking the record or the personnel file (P.Ex.82) and noting that P. Ex. 11, the correction at the unemployment office, is not in P.Ex.82, the personnel file.

There is no doubt about it when a false document (P.Ex.9) assassinating the reputation of a teacher in her teaching profession is a stigmatization when said false document (P.Ex.9) was in a public record. Further, this false document in the personnel file stigmatized Dr. Asam's teaching reputation to the extent that her Request for Transfer was not granted because other principals had access to her personnel file. Since the personnel file was a public record according to Florida Statute, 119.911(1) as shown in (Dade County School Board v. Miami Herald Pub. Co. supra), this is a permanent publication and is the reason Dr. Asam did not receive any teaching position since 1978 and had to start annother career by studying law after she was over 50 years of age. Dr. Asam who also has a Ph.D. graduated in 1986 with a J.D. and recently studied for the bar so that she can practice law.

The Plaintiff/Appellant stated in detail in the Appellant Brief to 86-3142 in the U.S. Court of Appeals, Eleventh Circuit with re-

ference to the record that a prima facie case was presented by Plaintiff at the trial court. Therefore, the Plaintiff/Appellant met all the elements as stated in Blanton v. Griel Memorial Psychiatric Hospital supra. These references to the record will be written in the Merits Brief when requested.

Dr. Asam is entitled to have her liberty interest restored and to receive compensation for its loss is established by Carey v. Piphus 435 U.S. 247 (1978). See Piphus v. Carey, 545 F. 2d 30, (7th Cir. 1976).

Therefore, the Honorable Supreme Court of the United States does have jurisdiction under 42 U.S.C. §1983 because the Lee County School Board did act under color of state law by creating and refusing to remove a known false document after notice and the said false document was in the personnel file of Dr. Asam, when said file was a public record, and the libelous statement which falsely stated "discharged for misconduct connected with work" did stigmatize Dr. Asam from ever receiving a teaching position anywhere.

Further the same trial judge, Honorable Robert Morgan, denied the summary judgment against the Defendants and for the plaintiff on the basis of the same case, Clemons v. Dougherty County, Georgia, 684 F. 2d 1365 (11th Cir. 1982), but at trial erroneously directed a verdict on the same issues of stigmatization.

The U.S. Court of Appeals, Eleventh Circuit 86-3142 case should be reversed and the case remanded for new trial or in the alternative the JNOV should be granted and the case remanded for trial on the damages or because of the libelous per se claim damages do not have to be proved the compensatory damages as stated pp. 37-38 of this brief should be awarded to Dr. Asam for loss of her liberty rights under the Fourteenth Amendment to the U.S. Constitution and for libelous statements that are false under the First Amendment to the U.S. Constitution since the Lee County School Board abused the freedom of speech of the First Amendment to the U.S. Constitution.

See Fusco v. State of Conn. 815 F. 2d 201, 205 (2nd Cir. 1987) which states,

> "[2] Our analysis is guided by Parratt v. Taylor, 451 U.S. 527, 101 S. Ct. 1908, 68 L. Ed. 2d 420 (1981), overturned in part on other grounds, Daniels v. Williams, 474 U.S. 327, 106 S. Ct. 662, 88 L. Ed. 2d 662 (1986), wherein the Supreme Court stated that
>
> > "in any §1983 action the initial inquiry must focus on whether the two essential elements to a §1983 action are present: (1) whether the conduct complained of was committed by a person acting under color of state law; and (2) whether this concommitted by a person acting under color of state law; and (2) whether this conduct deprived a person of rights, privileges or immunities secured by the Constitution or laws of the United States."
> >
> > Parratt, 451 at 535, 101 S. Ct. at 1913.

See Cobb v. Georgia Power Co. 757 F. 2d 1248 (11th Cir. 1985) stated at 1250,

> "The statutory "under color of law" requirement is equivalent, although not identical, to the constitutional doctrine of state action. Lugar v. Edmondson Oil Co. 457 U.S. 922, 102 S. Ct. 2744, 73 L. Ed. 2d 482 (1982)."

This case Lugar v. Edmondson Oil Co., supra,

to P.Ex.9. The only correction ever made of P. Ex. 9 was not in the personnel file of Dr. Asam but at the Unemployment office and was known as P. Ex. 11 and was NEVER in the personnel file of Dr. Asam at the Lee County School Board.(See APPENDIX B p. 9a).

See Mitchum v. Foster, 407 U.S. 225, 32 L. Ed. 2d 705, 92 S. Ct. 1251 (1972) which states,

> "10. The purpose of the federal civil rights statute (42 USCS §1983) authorizing an action at law, a suit in equity, or other proper proceedings for redress of deprivation, under color of state law, or rights secured by the Federal Constitution and federal laws, is to interpose the federal courts between the states and the people, as guardians of the people's federal rights, and thus to protect the people from unconstitutional action under color of state law..."

The point is that the U.S. Court of Appeals, Eleventh Circuit, has been inconsistent with case law from their own circuit, specifically Blanton v. Griel Memorial Psychiatric Hospital, 758 F. 2d 1540, (11th Cir. 1985) which states the elements for deprivation

states,

> "Title 42 USC :1983 provides a remedy for deprivation of rights secured by the Constitution and laws of the United States when that deprivation takes place "under color of any statute, ordinance, regulation, custom, or usage, of any State or or Territory..." This case concerns the relationship between the §1983 requirement of action under color of state law and the Fourteenth Amendment requirement of state action.

The Plaintiff/Appellant has met both elements the "under color of state law" because the Lee County School Board was acting under color of state law when the Board retained the false document (P.Ex.9) after notice to remove and the Board failed to write a note to the personnel file that P.Ex. 9 was incorrect.

Therefore what started as a mistake as stated in P.Ex.9 "discharged for misconduct connected with work", escalated to a stigmatization issue when the Lee County School Board failed to remove the said P. Ex. 9 from the personnel file of Dr. Asam or to write any note stating it was a correction

of liberty rights under the 14th amendment to the U.S. Constitution without due process. The prima facie elements stated in the Blanton case was met as demonstrated in the Appellant Brief with reference to the record to the U.S. Court of Appeals, Eleventh Circuit and therefore, a Merits brief is needed to discuss all these elements. See composite questions V and VI in front of this brief for issues before the U.S. Court of Appeals, Eleventh Circuit.

The Plaintiff/Appellant is arguing the first four questions presented in this jurisdictional brief.

The bottom line is the U.S. Court of Appeals, Eleventh Circuit is inconsistent with the law in Clemons v. Dougherty County, Georgia, 684 F. 2d 1365 (11th Cir. 1982), which precluded summary judgment for the issues of stigmatization. The Hon. Robert Morgan denied summary judgment on the issue of stigmatization citing the Clemons case (see APPENDIX A in this brief). Yet, the same

judge in the trial court granted directed verdict for the Defendants on the same issue of stigmatization which was clearly shown at trial by the Plaintiff/Appellant (see pp. 26-31 of this Jurisdictional Brief).

III. The trial judge, Hon. Robert Morgan clearly abused his discretion[3] and violated 18 U.S.C. §1503 in his behavior of obstructing justice when the Hon. Judge Robert Morgan verbally attached the plaintiff in open court and before the public and press by stating, "You are your own worst enemy" for no reason after he had granted the motion for directed verdict for the Defendants-- thus the Hon. Judge violated the First Amendment rights of Dr. Asam to the U.S. Constitution by abusing the freedom of speech and by abuse of his authority obstructed justice. The Hon. Judge Morgan also violated the 5th Amendment due process of the U.S. Constitu-

[3]The trial judge abused his discretion by refusing to allow impeachment by leading the witness and interpreting a yes as a no answer. (See pp. 37-38 in this brief.)

tion since the judge should have declared a mistrial or at least granted the motion of new trial which he denied before he recused himself from further proceedings (R4 166). For the libelous statement by the Hon. judge abusing his discretion by stating "You are your own worst enemy", see (R7 376 1.8).

Therefore, this statement "You are your own worst enemy" by the Hon. Judge Robert Morgan, U.S. District Judge, not only is an abuse of discretion but also is an abuse of Dr. Asam's rights under the First Amendment to the U.S. Constitution, as well as an obstruction of justice under 18 U.S.C. 1503 and a violation of Dr. Asam's rights of due process in a trial under the Fifth Amendment to the U.S. Constitution since she did not have a fair trial.

See U.S. v. Jeter, C.A.6 (Ky.) 1985, 775 F. 2d 670, cert. denied 106 S. Ct. 1696, 90 L. Ed. 2d 341. held that

> "application of obstruction of justice statute [18 U.S.C.A. §1503] to defendant was neither overbroad under the First Amendment nor void for vagueness under the Fifth Amendment."

There is no doubt about it when the Hon. Judge Robert Morgan abused his discretion when he yelled at the plaintiff "You are your own enemy" (R7 376 l. 8) for no reason before the Court, public and press at trial. See APPENDIX B p. 18a where the U.S. Court of Appeals, Eleventh Circuit incorrectly stated in its opinion "nor abused its discretion."

IV. The hon. trial judge did violate plaintiff's rights under the 7th Amendment to U.S. Constitution when he bifurcated the trial into liability and damages issues and then without notice to plaintiff at the end of the trial the judge was considering damages in the first trial, (abuse of discretion since he would not allow evidence on damages in trial and then the Hon. Judge stated he would only consider the amount in another trial (R7 373 l. 1-3).

The Plaintiff/Appellant is not appealing the related case 86-3309 which affirmed the denial of attorney fees by the trial court.

CONCLUSION

The Supreme Court of the United States has jurisdiction to review case 86-3142 from the U.S. Court of Appeals, Eleventh Circuit as an appeal based on the following federal statutes: 28 U.S.C. §1254(2); 42 U.S.C. §1983; 28 U.S.C. §2106; and 28 U.S.C. §1343 (3).

The U.S. Court of Appeals, Eleventh Circuit by affirming the Directed Verdict in the pendent libel per se issue, held Florida Statute 119.011(1), defining public record, invalid as a state statute and is repugnant to the U.S. Constitution, Amendment I, V, and XIV. Therefore, the Supreme Court of the United States has jurisdiction to review as an appeal under 28 U.S.C. §1254(2).

The U.S. Court of Appeals, Eleventh Circuit by affirming, grossly failed to carefully review the facts and law i.e. the trial court did misapply the law and abuse its discretion.

The Supreme Court of the United States has jurisdiction to review the case 86-3142 under

42 U.S.C. §1983 as an appeal because the Lee County School Board by its deprivation of the liberty rights of Dr. Asam under the Fourteenth Amendment to the U.S. Constitution without due process and without any notice of correction in the personnel file of Dr. Asam triggered the 42 U.S.C. §1983 claim because Lee County School Board was acting "under color of state law" when the School Board retained a false document (P.Ex.9) after notice to remove (D.Ex.4) -- at that time the mistake escalated to stigmatization when Lee County School Board was knowingly retaining a false document that on the face of it stated,"discharged for misconduct connected with work' when there was no misconduct. Mr. DeShazo, agent and custodian of the personnel file of Lee County School Board was on constructive notice before he created the false document (P.Ex.9) that there was no misconduct. Mr. DeShazo corrected the false form only at the unemployment office (P.Ex.11) and there was NEVER

a correction in the personnel file that on the face of it stated it was a correction for the said false document (P.Ex.9). (See APPENDIX B, OPINION by U.S.Court of Appeals, Eleventh Circuit, made a gross error in stating the facts, misstated the facts since there was NEVER a corrected form in the personnel file of Dr. Asam.

Dr. Asam's teacher's reputation was stigmatized and assassinated to the point that she was permanently prevented from obtaining a teaching position since 1978 when she had a Rank I teaching certificate.

The Supreme Court of the United States should consider the instant case under 28 U.S.C. §2106 because the U.S. Court of Appeals, Eleventh Circuit, as seen in its opinion did not carefully review the errors of the trial court and the Eleventh Circuit not only misstated the facts (see APPENDIX B) but also failed to apply law from its own circuit i.e. the Clemons v.Dougherty County Georgia, 684 F. 2d 1365 (11th Cir. 1982)

and the Blanton v. Griel Memorial Psychiatric Hospital, 758 F. 2d 1540, (11th Cir. 1985).

Two other reasons why a new trial should be granted are:

(1) The Hon. trial judge violated the 7th Amendment to the U.S. Constitution when he first bifurcated the trial into liability issue and damage issue and then at the end of the trial considered both issues when he had refused to allow damages evidence in the trial.

(2) The Hon. trial judge clearly abused his discretion when he yelled at Dr. Asam in the trial "You are your own worst enemy". for no reason; therefore a new trial should be ordered. This unethical judicial behavior by a judge is an obstruction of justice under 18 U.S.C. 1503 and a violation of Dr. Asam's rights under the First and Fifth Amendments to the U.S. Constitution. Therefore, a new trial should be granted before an unbiased

judge who will conduct a fair trial.

The Honorable Court should reverse and remand for a new trial by a jury on all issues with permission to amend complaint or in the alternative, reverse and grant JNOV (See APPENDIX D) and remand the case for trial by a jury for damages, (compensatory and punitive). The compensatory damages, based on equivalent pay for the Ph.D. (see pp.33-34), is $813,747.00 plus interests, costs, and attorney fees spent. Lee County School Board et al. have maliciously libeled and knowingly stigmatized and assassinated the teacher reputation of Dr. Asam since 1978 by retaining a false document in her personnel file with no correction. Dated Sept. 25, 1987. Respectfully submitted,

Julia McCain Lampkin Asam

Julia McCain Lampkin Asam

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Jurisdictional Statement Brief was sent to Mr. Harry Blair, 2138-40 Hoople St., P.O. Box 1467, Fort Myers, Florida 33902; Lee County District School Board, Chairman, 2055 Central Ave., Fort Myers, Florida 33901; Mrs. Rayma C. Page, 2412 Kent Ave., Fort Myers, Florida 33907; Mr. Howard DeVore, 3173 Palm Beach Blvd., Fort Myers, Florida 33901; Mr. John William Mills, 2212 River Oak Lane S.E., Fort Myers, Florida 33905; Mr. John F. Beckett, 2925 Cortez Blvd., Fort Myers, Florida 33901; Mr. Robert L. Ratliff, 9464 Lakeview Blvd., North Fort Myers, Florida 33903; Mr. Ray V. Pottorf, 950 Aqua Lane, Fort Myers, Florida 33903; Mr. Vincent DeShazo, 5084 Westminister Dr., Fort Myers, Florida 33907; Clerk, U.S. District Court, Middle District of Florida, U.S. Courthouse, Tampa, Florida 33602; and

[For signature see back of this page for the Continuation of the Certificate of Service.]

CERTIFICATE OF SERVICE (CONTINUED)

Clerk, U.S. Court of Appeals, Eleventh Circuit, 56 Forsyth St. N.W., Atlanta, Georgia 30303 this 25th day of September 1987.

Julia McCain Lampkin Asam

Julia McCain Lampkin Asam, PH.D., J.D.
P.O. Box 1022
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Filed February 27, 1984

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

FORT MYERS DIVISION

JULIA L. ASAM,

Plaintiff

v.

LEE COUNTY DISTRICT SCHOOL BOARD, et al.,

Defendants.

No. 82-91-Civ-Ft.M.-EK

ORDER ON MOTION

FOR SUMMARY JUDGMENT

This cause is before the court upon the defendants' motion for summary judgment. The plaintiff filed the suit under 42 U.S.C. §1983, alleging that the defendant Lee County District School Board had allowed her employment contract as a high school teacher to expire after the 1977-78 academic year.

APPENDIX A (CONTINUED)

Jurisdiction is conferred on this court by 28 U.S.C. §§ 1331 and 1343(3).

After plaintiff's application for unemployment compensation, and in response to the state's routine questionnaire, it is admitted that defendant Vincent L. DeShazo, the Board's director of personnel, checked a box on the form indicating that the plaintiff had been "discharged for misconduct connected with work ...." The choices on the form are apparently not before the court. Upon telephone inquiry by unemployment compensation officials, the defendant DeShazo apparently attempted to clarify the matter by explaining that the school board had allowed the plaintiff's year-to-year contract to expire.

It is acknowledged that DeShazo later filled out a similar form from the unemployment compensation office in which he again noted that the contract has been allowed to expire. De-

APPENDIX A (CONTINUED)

fendant Ray V. Pottorf subsequently sent a copy of the plaintiff's personnel file, including a copy of the initial form with the questioned notation to the Equal Employment Opportunity Commission. Although the plaintiff requested the school board to retract the unemployment form as false, a copy of the uncorrected initial form is alleged to remain in the plaintiff's permanent personnel file. The plaintiff asserts that the defendants' communications, as well as their failure to correct the false statement, resulted in a violation of her liberty interest in her reputation as guaranteed by the Fourteenth Amendment to the United States Constitution.[1]

The court previously dismissed this action against the defendant school board members in their individual capacities. (See court's Order filed April 4, 1983.) In that Order the court noted that the

> "defendants acknowledge that plaintiff's complaint contains allegations sufficient to state a claim under such cases

[1] The plaintiff further requests this court to exercise pendent jurisdiction for libel under state law.

APPENDIX A (CONTINUED)

as Marrero v. City of Hialeah, 625 F. 2d 499 (5th Cir. 1980), and Dennis v. S & S Consolidated Rural High School District, 577 F. 2d 338 (5th Cir. 1978."

Although the defendants have changed their position "in light of Paul v. Davis," and the plaintiff contests the defendants' right to do so, the court need not address that question, as the court finds summary judgment to be inappropriate.

In Paul v. Davis, 424 U.S. 693 (1976), the Supreme Court clearly held that defamation standing alone and apart from any other governmental action will not support a claim for relief under 42 U.S.C. § 1983 and the Fourteenth Amendment. Case law in this circuit, however, has construed Paul v.Davis as establishing a "stigma-plus" test in which the plaintiff must demonstrate an injury to reputation in connection with a right or status previously recognized under state law, in order to implicate Fourteenth Amendment safeguards. See Dennis, 577 F. 2d at

APPENDIX A (CONTINUED)

341.[2]

Although the plaintiff clearly had no state-protected property right in continued employment, the state may not terminate her employment in such a manner as to unfairly damage her ability to seek other employment opportunities. See Board of Regents v. Roth, 408 U.S. 564, 573 (1972). It is that potential infliction of stigma in connection with the state's failure to rehire which remains as a genuine issue of material fact, i.e., whether the "stigma-plus" test has been met. Such an issue prevents summary judgment under Rule 56, F.R.Civ.P. See also Clemons v. Dougherty County, Georgia, 684 F. 2d 1365, 1368 (11th Cir. 1982. Accordingly, the defendants' motion must be denied.

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[2]In Bonner v. City of Prichard, Ala., 661 F. 2d 1206 (11th Cir. 1981), the Eleventh Circuit adopted as established precedent all Fifth Circuit cases decided before October 1, 1981.

APPENDIX A (CONTINUED)

IT IS ORDERED, therefore, that the motion for summary judgment is DENIED.

/s/Robert D. Morgan

Robert D. Morgan

United States District Judge

Entered: Feb. 27, 1984.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 86-3142

Non-Argument Calendar

JULIA L. ASAM,

Plaintiff-Appellant,

versus

LEE COUNTY DISTRICT SCHOOL BOARD, RAYMA C. PAGE, HOWARD DeVORE, JOHN WILLIAM MILLS, JOHN F. BECKETT, ROBERT L. RATLIFF, RAY V. POTTORF, and VINCENT DeSHAZO,

Defendants-Appellees.

No. 86-3309

Non-Argument Calendar

APPENDIX B (CONTINUED)

JULIA L. ASAM,

Plaintiff-Appellee,

versus

LEE COUNTY DISTRICT SCHOOL BOARD, RAYMA C. PAGE, HOWARD DeVORE, JOHN WILLIAM MILLS, JOHN F. BECKETT, ROBERT L. RATLIFF, RAY V. POTTORF, and VINCENT DeSHAZO,

Defendants-Appellants.

Appeals from the United States District Court for the Middle District of Florida

(April 7, 1987)

Before RONEY, Chief Judge, HILL and KRAVITCH, Circuit Judges.

PER CURIAM:

Julia L. Asam filed a complaint against the Lee County District School Board and its members, the Lee County Superintendent of Schools, and the Director of Personnel for Lee County Schools. Asam sought money damages and other relief under 42 U.S.C.A. §1983, alleging that her reputation was stigmatized by certain acts of school board personnel,

APPENDIX B (CONTINUED)

and under a pendant state claim for defamation. After a two-day trial, the district court directed a verdict on both counts, and Asam appealed. The defendants appealed the denial of their motion for attorney's fees under 42 U.S.C.A. §1988. Both appeals were consolidated by order of this Court. We affirm.

In May 1978, Asam, an annual contract teacher at North Fort Myers High School, was advised that her contract would not be renewed for the following term. Asam filed an application for unemployment compensation on June 12, 1978, and the Florida Division of Unemployment Compensation (Division) sent a questionnaire to Vincent DeShazo, Director of Personnel for the School Board. DeShazo checked the block on the form entitled "discharged for misconduct connected with work' and noted on the form that Asam's contract was allowed to expire. The form was signed and dated by DeShazo on June 15 and

APPENDIX B (CONTINUED)

mailed to the Division. Asam was contacted by the Division on June 19 and contested the block checked by DeShazo. After being telephoned by the Division, DeShazo immediately advised that Asam had not been discharged for misconduct and mailed a corrected form on June 21.[1] Copies of both forms were placed in Asam's personnel file.[2]

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[1]There is no form entitled "corrected form" in the personnel file of Dr. Asam at the Lee County School Board. Mr. Harry Blair, attorney for Lee County school Board falsely states in his Reply Brief in the 86-3309 case that "Document #34 is the corrected form" which is a phantom document since the exhibits by the Defendants only went to #27 - see R4 NR 154 2/03/86 entitled "EXHIBIT LIST by Deft." in Docket sheet of the U.S. District Court, Middle District of Florida case no. 82-91 CIV F.M. 17.]

[2]The bottom line is there was never a corrected form in Dr. Asam's Personnel File that stated that the unemployment form signed by Mr. DeShazo on June 15, 1978 was a mistake; the only corrected form was at the unemployment office (P. Ex. 11) and NOT at the School Board's Personnel File of Dr. Asam.

Therefore, the statement by the Honorable panel of the U.S. Court of Appeals, Eleventh Circuit, on p. 3 of their opinion which states above,

..."mailed a corrected form on June 21. Copies of both forms were placed in Asam's personnel file." is an incorrect statement of the facts. See Docket Sheet of U.S. Court of Appeals, Eleventh Circuit, for Memorandum filed by Plaintiff/Appellant on September 12,

APPENDIX B (CONTINUED)

In August 1978, Asam filed a complaint with the Equal Employment Opportunity Commission (EEOC) alleging sex discrimination as a basis for her discharge. The School Board submitted a copy of Asam's entire personnel file, including a copy of the incorrect form, to EEOC. The incorrect form, Asam claims, stigmatized her in her attempt to find employment in the teaching profession, and should not have been forwarded to EEOC.

Plaintiff raises 17 claims of error contain- 37 subissues on this appeal. These claims were examined individually but have been con-

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[Footnote 2 (Continued)]
22, 25 (entered 26), and on October 10 and 14, 1986 explaining Mr. Blair's deceptive practice because there was no corrected unemployment document in Dr. Asam's personnel file that stated it was a correction.

Note the form in question on June 21 was stamped received June 21, 1978 by PERSONNEL and the said form was mailed from the unemployment office to Lee County School Board c/o Personnel Director and was mailed on 6/19/78 and is entitled REIMBURSABLE. (See P. Ex. 82 index p. 2 and the said REIMBURSABLE is listed as item 62 by the Lee County School Board index and no mention is made of any corrected form for P. Ex. 9, the false unemployment form stating that Dr. Asam was "discharged for misconduct connected with work" when there was no misconduct. The Reimbursable form does not state on the face of it that it is a corrected form. The Lee

APPENDIX B (CONTINUED)

solidated for this discussion. First, plaintiff claims that the district court erred in granting the defendants' motion for directed verdict at the close of plaintiff's case in chief. In reviewing the grant of a direc- verdict,

> The court must view all the evidence, together with all logical inferences flowing from the evidence, in the light most favorable to the non-movant.
> If the facts and inferences point so strongly and overwhelmingly in favor of one party that the Court believes that reasonable men could not arrive at a contrary verdict, granting of motions is proper. On the other hand, if there is substantial evidence opposed to the motions, that is, evidence of such quality and weight that reasonable and fair-minded men in the exer-

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[Footnote 2 (Continued)]

County School Board incorrectly has listed on item 62 in P. Ex. 82, the personnel file, that Mr. DeShazo signed 6/19/78 which is impossible since the item 62 is stamped received June 21, 1978 Personnel[This is the Personnel of the Lee County School Board]. The point is that this Reimbursable document stamped received June 21, 1978 Personnel does not on the face of the document state it is a corrected form of the unemployment false document (P.Ex. 9). P. Ex. 9 in the index is item 61 in index of P. Ex. 82 and is listed as item 61 "Unemployment Compensation form signed by Vincent DeShazo 6/15/78 (2 copies)". Therefore, Lee County School Board retained two false documents (P. Ex. 9) in the Personnel File of Dr. Asam.]

APPENDIX B (CONTINUED)

> cise of impartial judgment might reach different conclusions, the motions should be denied, and the case submitted to the jury.

Love v. Sheffield, 777 F. 2d 1453, 1454 (11th Cir. 1985), quoting Boeing Company v. Shipman, 411 F. 2d 365, 374-75 (5th Cir. 1969) (en banc). A careful review of the record reveals that the act which formed the basis of the claim for liability was a mistake[3] The erroneous report to the Division was corrected immediately upon notification by telephone and shortly thereafter with a correctly com-

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[3The U.S. Court of Appeals, Eleventh Circuit, is correct that the basis of the claim for liability started with a mistake; however, the U.S. Court of Appeals, Eleventh Circuit did not carefully review P. Ex. 82 and note that P. Ex. 11, the true corrected unemployment document is not in the Personnel File of Dr. Asam. The point is that the Lee County School Board through Mr. DeShazo corrected immediately the mistake in P. Ex. 9 and the said correction remained in the unemployment office and was NEVER IN THE PERSONNEL FILE of Dr. Asam at the Lee County School Board. There is no form in the Personnel File of Dr. Asam that states that it is the corrected form of the false unemployment form (P. Ex. 9) -- see P. Ex. 82, the personnel file, p. 2 for index items 61 and 62.]

APPENDIX B (CONTINUED)

pleted form.[4] There was no effective stigmatization arising from transmission of plain-

[4]The point is the corrected form was NEVER IN THE PERSONNEL FILE of Dr. Asam at the Lee County School Board which is known as P. Ex.11 (Note by reviewing P.Ex.82 - the personnel file of Dr. Asam that there is not a document such as P. Ex. 11, the true correction by Mr. DeShazo only at the unemployment office).
The point is what started as a mistake (P. Ex. 9) escalated to stigmatization when the Lee County School Board failed to remove the said false document (P. Ex. 9) after notice (Exhibit 4 of Defendants Exhibits but the Exhibit 4 was a letter by Dr. Asam dated May 7, 1982. On May 7, 1982 before filing the instant underlying case, a demand was made to the Lee County School Board to remove said false unemployment form from the Personnel File of Dr. Asam (See Exhibit 4 of Defendants' Exhibits, which was written by Dr. Asam to School Board). Even after this notice on May 7, 1982 which was an update of a letter on Sept. 20, 1978, the Lee County School Board refused to remove the false unemployment form and did not make a corrected form after demand for removal of said false unemployment form. At this time the mistake escalated to stigmatization because the Lee County School Board ratified Mr. DeShazo's actions and was knowingly maintaining a false document in the Personnel File of Dr. Asam without a corrected form stating that P.Ex. 9 was incorrect or without removing P. Ex. 9 from the Personnel File of Dr. Asam. The U.S. Court of Appeals, Eleventh Circuit did not carefully review the record or they would have also noticed that the P. Ex. 9 (item 61) in the Personnel File of Dr. Asam (P.Ex. 82) is in the personnel file in duplicate with no document stating that P. Ex. 9 has been corrected.
The point is the U.S. Court of Appeals, Eleventh Circuit was mislead by the phantom document #34 by Mr. Blair in his Reply Brief in the related case 86-3309 consolidated with 86-3142. The U.S. Court of Appeals, Eleventh Circuit, was notified as stated in the footnote above about the non-existing #34 document which was

APPENDIX B (CONTINUED)

tiff's file to EEOC.[5] Additionally, during the four-year period from her termination to the filing of this law suit, a review of personnel file reflects only one written inquiry[6] from a prospective employer. The re-

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[Footnote [4] Continued]
not accepted into evidence and has never been seen by Dr. Asam. (see docket sheets of 86-3142 in the U.S. Court of Appeals, Eleventh Circuit, the Memorandum by Dr. Asam after the Reply Brief to 86-3309 was filed by Mr. Harry Blair, Attorney, for the Lee County School Board.]

[[5]There is no proof that there was no effective stigmatization arising from transmission of plaintiff's file to EEOC since collateral issue - the EEOC may not have pursued the case because of the false document now known as P. Ex. 9. It was the EEOC that told Dr. Asam that the false document now known as P. Ex. 9 was in the personnel file since Dr. Asam did not know it was in the personnel file until EEOC gave her a copy of P. Ex. 9.
The point is the Personnel File of Dr. Asam was a public record according to Florida Statute 119.011(1) as stated in Dade County School Board v. Miami Herald Pub. Co. 443 So. 2d 268 (DCA of Fla. 3rd Dist., 1983), and therefore is a permanent publication. (See composite exhibits, P. Ex. 107, 108, and 109 showing enormous number of positions applied for by Dr. Asam and no one hired her when she had the highest qualifications - i.e. Rank I as a teacher's certification.)]

[[6]See p. 13 of Appellant Brief, U.S. Court of Appeals, 11th Circuit 86-3142 showing in detail how Ms. Rayma Page, Chairman of the Lee County School Board, gave an example of how information the personnel file kept a teacher from being hired - Ms. Page said..." word of mouth got around and she didn't get hired ... (P.

APPENDIX B (CONTINUED)

sponses to the prospective employer only stated the dates of plaintiff's employment. No reference was made to the challenged incorrect form and there is no evidence that a prospective employer was ever made aware of its existence. When viewing the evidence in the light most favorable to the plaintiff, a directed verdict was proper.

Second, plaintiff asserts errors involving evidentiary rulings by the district judge. The district court is empowered with broad discretion in determining the admissibility of evidence and will be reversed only if its discretion has been abused. Loughan v. Firestine Tire & Rubber Co., 749 F. 2d 1519, 1524

[Footnote 6 continued]

Ex. 154, p. 37 l. 25). Therefore, one letter in the Personnel File of Dr. Asam concerning an inquiry is not a true answer when said filed is RETAINED BY DEFENDANTS and the Defendant Ms. Page admitted that word of mouth was the way a teacher is not hired from a bad record in personnel file. This false document (P. Ex. 9) definitely stigmatized Dr. Asam in her "Request for Transfer". (See D. Ex. 8 showing Request for Transfer checked.)]

APPENDIX B (CONTINUED)

(11th Cir. 1985). A review of the record reveals no abuse of the court's discretion.[7]

Third, plaintiff claims that the district court erred in denying her leave to amend her complaint. District courts exercise broad discretion when determining whether an amendment to the complaint should be allowed, once responsive pleadings have been filed, and a district court's denial of a motion to amend will be reversed only on a clear showing of an abuse of discretion. See Henson v. Columbus Bank & Trust Co., 770 F. 2d 1566, 1574 bus Bank & Trust Co., 770 F. 2d 1566, 1574 (11th Cir. 1985). Plaintiff's motion to amend was filed after extensive pretrial activity and more than three years after the filing of the initial complaint. The district court

[7]The bottom line is that the Hon. Judge Morgan abused his discretion when he verbally attacked Dr. Asam in open court when the judge said for no reason "You are your own worst enemy" (R7 376 1. 8). See Statement of Facts this Brief for other abuse of discretion by the Hon. Judge Morgan, who denied the post-trial motions and then the judge recused himself from any further proceedings. See APPENDIX E].

APPENDIX B (CONTINUED)

was within its discretion in denying that motion.

Finally, plaintiff complains that the district court ordered a bifurcated trial with respect to the issues of liability and damages, and that the court allowed the defendants to examine plaintiff's witnesses during plaintiff's case in chief with respect to matters not covered on direct examination so that they would not have to be recalled during the defendants' case in chief. Both of these matters are within the sound discretion of the district court. See Fed. R. Civ. P. 42(b); T.D.S., Inc. v. Shelby Mut. Ins. Co., 760 F. 2d 1520, 1535 (11th Cir. 1985) (district court's decision on separate trials will not be disturbed absent an abuse of discretion); and United States v. Davis, 546 F. 2d 583, 593 (5th Cir.), cert. denied, 431 U.S. 906 (1977) (the scope of cross-examination is a matter within the trial judge's sound discretion). The district court's rulings on these points cannot be

faulted under the absue of discretion standard of review.

The defendants appeal the denial of attorneys's fees by the district court and have filed a motion for attorney's fees in this Court. The award of attorney's fees under 42 U.S.C.A. §1988 is within the discretion of the district court and will not be reversed absent a showing of clear abuse of discretion. See Dowdell v. City of Apopka, Florida, 698 F. 2d 1181, 1187 (11th Cir. 1983). No abuse is shown on this record. Defendants' motion for attorney's fees on this appeal is DENIED.

Because the district court neither misapplied[8] the law nor abused its discretion, the judgments in 86-3142 and 86-3309 are due to be AFFIRMED.

[8The point is that the Hon. Judge Morgan misapplied the law in Clemons v. Doughterty County, Georgia, 684 F. 2d 1365, (11th Cir. 1982), because the same Judge Morgan of the U.S. District Court, Middle District of Florida, who denied the Summary Judgment for Defendants, granted a Directed Verdict for Defendants on the same facts i.e. stigmatization issue (R2 58 1-3) when summary judgment is precluded by Clemons v. Dougherty County, Georgia 684 F. 2d 1365, (11th Cir. 1982).]

APPENDIX C

Filed Feb. 7, 1986

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

FORT MYERS DIVISION

JULIA L. ASAM,

Plaintiff,

v.

LEE COUNTY SCHOOL BOARD, et al.,

Defendants.

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 82-91 Civ Ft. M. 17

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the court having granted a motion for a directed verdict in favor of the defendants. plaintiff shall take nothing in her claim against the defendants, Lee County School Board, et al, the action is DISMISSED. The defendants, Lee County School Board, et al., shall re-

APPENDIX C (CONTINUED)

cover of the plaintiff, Julia L. Asam, their costs of action.

Date Feb. 5, 1986

Clerk DONALD M. Cinnamond

/s/ Earl T. Jones

(By) Deputy Clerk

APPENDIX D

From the Trial Transcript of 82-91 CIV F.M. 17 in record (R7 370 l. 15-22) is recorded as follows:

Mrs. ASAM: I argue that the Plaintiff did make a case, your Honor.

THE COURT: Well, tell me now.

MRS. ASAM: All right, your Honor. May I make my motion for directed verdict?

THE COURT: You sure may.

MRS. ASAM: Yes, sir. ...

(R7 371 l. 6-7) is recorded as follows: THE COURT: So a motion for a directed verdict is denied.

APPENDIX D (CONTINUED)

[Therefore, the prerequisite for the Plaintiff later filing the JNOV was made in the record by the Plaintiff making a motion for directed verdict which was denied. The jury had already been dismissed by the Court for the day and the Defendants made a motion for directed verdict first before the plaintiff made her motion for directed verdict.]

APPENDIX E

Filed Feb. 20, 1986

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

FORT MYERS DIVISION

JULIA L. ASAM,

Plaintiff(s),

vs.

LEE COUNTY DISTRICT SCHOOL BOARD, ET AL.,

Defendants(s).

Case No. 82-91-CIV-Ft.M. 17

APPENDIX E (CONTINUED)

ORDER ON MOTIONS

This cause is before the Court on the following motions filed by Plaintiff, Julia L. Asam:

Motion to Disqualify the Honorable Judge Morgan, filed with this Court February 11, 1986. The motion is DENIED.

Motion to Hold Howard DeVor in Contempt, filed with this Court February 11, 1986. The motion is DENIED.

Motion for Judgment Notwithstanding the Verdict, filed with this Court February 11, 1986. The motion is DENIED.

Motion for New Trial, filed with this Court February 11, 1986. The motion is DENIED.

DONE AND ORDERED this 17th day of February, 1986.

[in handwriting]The undersigned judge recuses himself from further proceedings in this case.

/s/ Robert D. Morgan

ROBERT D. MORGAN

Copies to all parties and counsel of record.

APPENDIX F

Filed April 10, 1986

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

FORT MYERS DIVISION

JULIA L. ASAM,

Plaintiff(s),

vs.

LEE COUNTY DISTRICT SCHOOL BOARD, ET AL.,

Defendant(s).

Case No. 82-91-CIV Ft. M. 17

ORDER DENYING MOTION FOR ATTORNEY'S FEES AND ORDERING RESPONSE

This cause is before the Court on Defendants' motion for attorney's fees, filed March 18, 1986, and Defendants' request for costs, filed March 10, 1986. Accordingly, it is

ORDERED that the motion for attorney's fees be, and hereby is, denied. Defendants

APPENDIX F (CONTINUED)

are given up to and including April 22, 1986, to reply to Plaintiff's response/motion to strike the amount of the Defendants' bill of costs filed March 21, 1986. Thereafter, Plaintiff is given up to and including May 6, 1986, to reply if necessary.

DONE and ORDERED in Chambers, in Tampa, Florida, this 10th day of April, 1986.

/s/ Elizabeth A. Kovachevich

ELIZABETH A. KOVACHEVICH

United States District Judge

Copies to:

All Parties and Counsel of Record

APPENDIX G

Entered April 7, 1987

United States Court of Appeals

For the Eleventh Circuit

No. 86-3142

Non-Argument Calendar

D.C. Docket No. 82-91

APPENDIX G (CONTINUED)

JULIA L. ASAM,

Plaintiff=Appellant,

versus

LEE COUNTY DISTRICT SCHOOL BOARD
RAYMA C. PAGE, HOWARD DEVORE,
JOHN WILLIAM MILLS, JOHN F. BECKETT,
ROBERT L. RATLIFF, RAY V. POTTORF,
and VINCENT DeSHAZO,

Defendants-Appellees.

No.86-3309

Non-Argument Calendar

D.C. Docket No. 82-91

JULIA L. ASAM,

Plaintiff-Appellee,

versus

LEE COUNTY DISTRICT SCHOOL BOARD
RAYMA C. PAGE, HOWARD DEVORE,
JOHN WILLIAM MILLS, JOHN F. BECKETT,
ROBERT L. RATLIFF, RAY V. POTTORF,
and VINCENT DeSHAZO,

Defendants-Appellants.

APPENDIX G (CONTINUED)

Appeals from the United States
District Court for the
Middle District of Florida

Before RONEY, Chief Judge, HILL and KRAVITCH, Circuit Judges.

J U D G M E N T

These causes came on to be heard on the transcript of the record from the United States District Court for the Middle District of Florida, and were taken under submission by the Court upon the record and briefs on file, pursuant to Circuit Rule 23;

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgments of the said District Court in these causes be and the same are hereby, AFFIRMED:

It is further ordered that plaintiff-appellant pay to defendants-appellees in case no. 86-3142, and that defendants-Appellants pay to plaintiff-appellees in case no. 86-3309, the costs on appeal to be taxed by the Clerk of this Court.

APPENDIX G (CONTINUED)

Entered: April 7, 1987

For the Court: Michael J. Cortez, Clerk

By: /s/ David Maland

Deputy Clerk

Issued as Mandate: Aug 03 1987

APPENDIX H

Filed July 22, 1987

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 86-3142 & 86-3309

JULIA L. ASAM,

VERSUS Plaintiff-Appellant,

versus

LEE COUNTY DISTRICT SCHOOL BOARD,

RAYMA C. PAGE, et al.,

Defendants-Appellees.

Appeal from the United States

District Court for the

Middle District of Florida

ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

APPENDIX H (CONTINUED)

Before RONEY, Chief Judge, HILL and KRAVITCH, Circuit Judges.

PER CURIAM:

[Check] The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court have requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 26), the Suggestion for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ Paul H. Roney

United States Circuit Judge

APPENDIX I

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution, Amendment I.,

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the

APPENDIX I (CONTINUED)

right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

United States Constitution, Amendment V

in pertienent part, as follows:

"No person shall... be deprived of life, liberty or property, without due process of law..."

United States Constitution, Amendment XIV

"Section 1, All persons born or natrualized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside; No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor the equal protection of the laws."

United States Constitution, Amendment VII

"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved,

APPENDIX I (CONTINUED)

and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law."

FEDERAL STATUTES

42 U.S.C. §1983

"Every person who, under color of any statute, ordinance, regulation, custom, usuage, or any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities accured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

28 U.S.C. §1343(3)

3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usuage, or any right, privilege or immunity secured by the Constitution

APPENDIX I (CONTINUED)

of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;"

28 U.S.C. §2106

"The Supreme Court of any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of court lawfully brought before it for review, and many remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances."

28 U.S.C. §1254

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

APPENDIX I (CONTINUED)

(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted the Federal questions presented;"

18 U.S.C. §1503

"Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States commissioner or other committing magistrate, in the discharge of his duty, or injuries any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or

APPENDIX I (CONTINUED)

injuries any such officer, commissioner, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats or force or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impedes, the due administration of justice, shall be fined not more than $5,000 or imprisoned not more than five years, or both."

FLORIDA STATUTE 119.011(1)

"Public records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."

APPENDIX J

Filed September 18, 1987.

IN THE U.S. COURT OF APPEALS

ELEVENTH CIRCUIT

APPENDIX J (CONTINUED)

JULIA McCAIN LAMPKIN ASAM, Ph.D., J.D.

Plaintiff/Appellant

vs.

LEE COUNTY DISTRICT SCHOOL BOARD, RAYMA C. PAGE, HOWARD DeVORE, JOHN WILLIAM MILLS, JOHN F. BECKETT, ROBERT L. RATLIFF, RAY V. POTTORF, AND VINCENT L. DE SHAZO

Defendants/Appellees Case no. 86-3142

NOTICE OF APPEAL

NOTICE is hereby given that Julia McCain Lampkin Asam, Ph.D., J.D., (Julia L. Asam) Plaintiff/Appellant, above named, hereby appeals to the Supreme Court of the United States from the order of judgment entered on April 7, 1987, with Petition for Rehearing and Suggestion for Rehearing En Banc being denied on July 22, 1987, by the U.S. Court of Appeals, Eleventh Circuit (see Exhibit 1 and 2 attached [APPENDIX G AND H in Brief].

The Supreme Court of the United States has jurisdiction under the following:

APPENDIX J (CONTINUED)

28 U.S.C. §1254 42 U.S.C. §1983

28 U.S.C. §2106 28 U.S.C. § 1343 (3)

Proof of Service attached as well as Certificate of Service.

Jurisdictional Briefs (40 copies) will be sent to the Supreme Court of the United States together with the $200 docket fee.

Respectfully submitted,

/s/Julia McCain Lampkin Asam

Julia McCain Lampkin Asam

Attachments:

Exhbitis 1 and 2 and Proof of Service

Notice of Appeal to Supreme Court of the United States from U.S. Court of Appeals, Eleventh Circuit ..... p. 2

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the above Notice of Appeal was sent to Mr. Harry A. Blair, 2138-40 Hoople Street, P.O. Box 1487, Fort Myers, Florida 33902; Lee County District School Board, Chairman,

APPENDIX J (CONTINUED)

2055 Central Ave., Fort Myers, Florida 33901; Mrs. Rayma C. Page, 2412 Kent Ave., fort Myers, Florida 33907; Mr. Howard DeVore, 3173 Palm Beach Blvd., Fort Myers, Florida 33901; Mr. John William Mills, 2212 River Oak Lane S.E., Fort Myers, Florida 33905; Mr. John F. Beckett, 2925 Cortez Blvd., Fort Myers, Florida 33901; Mr. Robert L. Ratliff, 9464 Lakeview Blvd., North Fort Myers, Florida 33903; Mr. Ray V. Pottorf, 950 Aqua Lane, Fort Myers, Florida 33903; Mr. Vincent DeShazo 5084 Westminister Dr., Fort Myers-Florida 33907; Clerk, U.S. District Court, Middle District of Florida, U.S. Courthouse, Tampa, Florida 33602; and Clerk, The Supreme Court of the United States, U.S. Supreme Court Building, 1 First St. N.E., Washington, D.C. 20543 this 17th day of September 1987.

/s/ Julia McCain Lampkin Asam

Julia McCain Lampkin Asam, Ph.D., J.D.

P.O. Box 1022

University, Alabama 35486

Supreme Court, U.S.
FILED
OCT 24 1987
JOSEPH F. SPANIOL, JR.
CLERK

87-531
No.

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1987

JULIA McCAIN LAMPKIN ASAM,

Plaintiff/Appellant,

vs.

LEE COUNTY DISTRICT SCHOOL BOARD, RAYMA C. PAGE, HOWARD DeVORE, JOHN WILLIAM MILLS, JOHN F. BECKETT, ROBERT L. RATLIFF, RAY V. POTTORF, AND VINCENT L. DeSHAZO

Defendants/Appellees.

ON APPEAL FROM THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

APPELLEES' MOTION TO DISMISS APPEAL AND BRIEF IN SUPPORT THEREOF

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

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MOTION TO DISMISS APPEAL AND APPELLEES' BRIEF IN SUPPORT OF THEIR MOTION TO DISMISS AN APPEAL TO THE UNITED STATES SUPREME COURT

MOTION TO DISMISS APPEAL

COME NOW the Defendants, LEE COUNTY DISTRICT SCHOOL BOARD, RAYMA C. PAGE, HOWARD DeVORE, JOHN WILLIAM MILLS, JOHN F. BECKETT, ROBERT L. RATLIFF, RAY V. POTTORF and VINCENT L. DeSHAZO, by and through their undersigned attorneys, HARRY A. BLAIR, P.A., and herewith move this Court to dismiss the appeal of JULIA McCAIN LAMPKIN ASAM to this Court pursuant to Rule 16.1(a) on the ground that the appeal is not within this Court's jurisdiction and because the appeal is not taken in conformity with the rules of this Court.

STATEMENT OF THE CASE

In 1982 Ms.Asam filed suit against The School Board, the individual members of the School Board, the Superintendent of Schools and the Director of Personnel. The suit sought monetary damages and other relief under 42 U.S.C. § 1983 alleging that Ms. Asam's reputation had been stigmatized in the process of non-renewal of her annual teaching contract. **Huffstutler v. Bergland,** 607 F.2d 1090 (5th Cir. 1979); **Dennis v. S&S School District,** 577 F.2d 338 (5th Cir. 1978); **Paul v. Davis,** 424 US 693, 47 L.Ed.2d 405, 965 S.Ct. 1155, reh. den. 425 US 985, 48 L.Ed.2d 811, 96 S.Ct. 2194 (1976); **Codd v. Velger,** 429 US 624, 51 L.Ed.2d 92, 97 S.Ct. 882 (1977); **Board of Regents v. Roth,** 408 US 564, 33 L.Ed.2d 548, 92 S.Ct. 2701 (1972); **Bishop v. Wood,** 426 US 341, 48 L.Ed.2d 684, 96 S.Ct. 2074 (1976); A second pendent count sought damages for defamation of character. At the end of a two-day jury trial the District Court entered a directed verdict for the Defendants on both counts. Ms. Asam thereafter appealed. The Defendants filed a Motion for Attorney's Fees in the District Court on the basis that the suit was frivolous. The District Court denied the Defendants' Motion for Attorney's Fees. The Defendants then appealed the Order denying attorney's fees. The appeals were consolidated by an Order of the Court of Appeals dated June 20, 1986. The Court of Appeals then affirmed.[1]

[1]See Appendix

STATEMENT OF THE FACTS

Ms. Asam was employed as an earth science teacher by the School Board for the 1976-77 school year and the 1977-78 school year. She was an annual contract teacher without tenure. In May 1978, the Superintendent wrote Ms. Asam a letter advising her he would allow her annual contract to expire and that she would not be recommended for reappointment for the following school year.

Ms. Asam then filed for unemployment compensation in June 1978. The Division of Unemployment Compensation then sent an unemployment compensation inquiry form to the Director of Personnel. In turn, the Director of Personnel checked the block titled "discharged for misconduct connected with work." He also made a notation on the form that Ms. Asam's contract was allowed to expire and that the School Board did not have employment for her. He signed the form, dated his response June 15, 1978, and returned same to the State by mail the same day. After receiving the employer's response, Ms. Asam was summoned to the Division of Unemployment Compensation on June 19, 1978, and made a written statement contesting the fact that the Personnel Director had reported she had been discharged for misconduct connected with her work. The same document contains a comment that the caseworker contacted the Personnel Director by telephone the same day. The Personnel Director immediately made a telephonic correction and advised the State that Ms. Asam had not been discharged for misconduct connected with her work and that the School Board had no ground to contest the unemployment claim. Thereafter a corrected form was mailed to the Personnel Director and received June 21, 1978. The Personnel Director executed the corrected form and returned it to the State the same day by mail. Both of these forms were placed in Ms. Asam's personnel file.

On September 20, 1978, Ms. Asam wrote a letter to the School Board and the Superintendent. Basically, the letter complained about the principal and assistant principal at the school where Ms. Asam taught. The letter also requested that the Personnel Director make a written apology to Ms. Asam because of the response he had made to the State indicating that she had been discharged for misconduct connected with her work. The letter also requested that the Personnel Director submit a new form

containing the correct information (which had already been done).

In August 1978, Ms. Asam then filed a complaint against the School Board with the EEOC alleging sex discrimination which resulted in her contract not being renewed. In response to the Complaint the EEOC directed the School Board to submit a copy of Ms. Asam's entire personnel file to it.

Not until May 1982, did the School Board again hear from Ms. Asam. At that point Ms. Asam again complained about the Personnel Director's report to the Division of Unemployment Compensation that Ms. Asam had been discharged for misconduct connected with her work. The letter added a new complaint—the School Board had sent copies of the contested unemployment compensation form to the EEOC in Miami. Ms. Asam's letter stated that her chances of employment had been ruined between the four (4) year period that she had last worked for the School Board and the writing of the letter alleging that the School Board's action was malicious and defamatory and that her constitutional rights had been violated. The letter threatened litigation. The pertinent part of the letter alleges that the School Board was disseminating the false information contained in the original unemployment compensation form and demanded that the School Board cease and reinstate Ms. Asam with full back pay and benefits. The following month Ms. Asam then filed suit in the United States District Court.

SUMMARY OF ARGUMENT

Ms. Asam's jurisdictional statement contains not one ground which would give this Court jurisdiction of this appeal. Neither does she state any grounds for certiorari.

DISPOSITION IN THE LOWER COURT

The Court of Appeals disposed of Ms. Asam's appeal with an unpublished written opinion. That opinion is reproduced as the sole exhibit[1] in the Appendix. The Court of Appeals did not consider, either expressly or by implication, any state statute as being repugnant to the Constitution, treaties or laws of the United States.[2]

---

[2]A petition for rehearing was denied and a suggestion for rehearing en banc denied on July 22, 1987, by the Court of Appeals.

STATEMENT OF INTERESTED PARTIES

The Defendants/Appellees are Lee County District School Board, 2055 Central Avenue, Fort Myers, Florida 33901; Mrs. Rayma C. Page, former Chairman, 2412 Kent Avenue, Fort Myers, Florida 33907; Mr. Howard DeVore, former School Board member, 3173 Palm Beach Blvd., Fort Myers, Florida 33901; Mr. John William Mills, former School Board member, 2212 River Oak Lane, SE, Fort Myers, Florida 33905; Mr. John F. Beckett, former School Board member, 2925 Cortez Blvd., Fort Myers, Florida 33901; Mr. Robert L. Ratliff, former School Board member, 9464 Lakeview Blvd., North Fort Myers, Florida 33903; Mr. Ray V. Pottorf, former Superintendent of Schools, 950 Aqua Lane, Fort Myers, Florida 33903; Mr. Vincent L. DeShazo, former Personnel Director, 5084 Westminister Drive, Fort Myers, Florida 33907; and the attorney for the Lee County District School Board (Lee County School Board), Mr. Harry A. Blair, 2138-40 Hoople Street, Post Office Box 1467, Fort Myers, Florida 33902.

The Plaintiff/Appellant is Julia McCain Lampkin Asam (Julia L. Asam).

ARGUMENT AND CITATION OF AUTHORITY

A cursory review of Ms.Asam's jurisdictional statement is ground enough to dismiss this appeal under Rule 16.1(a) which requires that an appeal be taken in conformity with the rules of this Court. The brief completely ignores Rule 15.1(e) which provides that the jurisdictional statement shall contain:

> A **concise** statement of the grounds on which the jurisdiction of this Court is invoked...

The brief is a potpourri of arguments which ignore both the rules of this Court and the applicable statute governing appeals.

An attempt to analyze Ms. Asam's jurisdictional statement reveals that the following points are made in support of appellate jurisdiction to this Court from a Court of Appeals:

> 1. The Court of Appeals found §119.001(1), Fla. Stat., unconstitutional (Jurisdictional statement, page 6).
>
> 2. The Court of Appeals affirmed this case in conflict with its own decisions (Jurisdictional Statement II and III, pages ii-v).

3. The District Court obstructed justice [18 USC §1503] and violated the due process clause of the Fifth Amendment when the Court advised Ms. Asam that "you are your own worst enemy." (Jurisdictional statement, page 4).

4. The District Court violated Ms. Asam's Seventh Amendment rights to a trial by jury when the Court bifurcated the trial as the the liability and damage issues (Jurisdictional statement V, pages vi-xix).

5. Ms. Asam incorporated all the issues raised before the Court of Appeals in her fifth issue. This includes seventeen (17) issues and numerous sub-issues, all of which are directed to the merits of the case and not jurisdiction.

6. Ms. Asam incorporated all of the questions and-issues she raised to the Court of Appeals in her petition for rehearing. These are all directed to the merits and not to jurisdiction.

Although Ms. Asam proudly touts a law degree as one of her titles, her brief is disorganized, rambling and largely incoherent. She characterizes this "appeal" as the case of "PHANTOM DOCUMENT #34" (Jurisdictional statement, page 16). She then baldly states that the Court of Appeals failed to read her brief and the record (Jurisdictional statement, pages 16-17), charged the District Court with obstructing justice because the Court told her "you are your own worst enemy," a statement she repeats dozens of times, and then hopefully attempts to "bootstrap" an appeal by making the unsupported assertion that the Court of Appeals held a Florida statute [§119.011(1)] unconstitutional.

In her brief on jurisdiction Ms. Asam seeks to invoke the jurisdiction of this Court under the following statutes:

28 USC §1254
28 USC §2106
42 USC §1983
28 USC §1343(3)
18 USC §1503

None of the above statutes support an appeal to this Court from a Court of Appeals. The controlling statute is 28 USC §1254 which provides:

> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;
> (2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented;
> (3) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

The only ground for an appeal from a Court of Appeals to this Court is contained in subsection 2 of the above quoted statute which provides for a right of "...appeal by a party relying on a State statute held by a Court of Appeals to be invalid under the Constitution, treaties or laws of the United States..." Such is certainly not the case **sub judice.**

None of the other three (3) statutes cited by Ms. Asam in her notice of appeal even tangentially support an appeal to this Court from a Court of Appeals. Hence, they will not be discussed.

A reference to Ms. Asam's "jurisdictional statement" reveals that the following issues were discussed in support of **jurisdiction** under issue five:

1. A directed verdict entered by the District Court constituted an abuse of discretion, with numerous sub-issues;
2. Whether the stigma-plus elements were proven at trial;
3. Whether an unemployment form is a public record;
4. Whether Ms. Asam was given due process in her discharge;
5. Whether Ms. Asam was damaged as a matter of law, with numerous sub-issues;

6. Whether the District Court abused its discretion by stating "you are your own worst enemy";

7. Whether the District Court violated Federal Rule of Evidence 404, with two sub-issues stated;

8. Whether the District Court erred in dismissing individual school board members from the suit;

9. Whether the District Court failed to follow the case law in four (4) instances;

10. Whether the District Court abused its discretion by denying Ms. Asam's motion to hold Mr. DeVore, a school board member, in contempt of court;

11. Whether the trial court abused its discretion in not allowing completion of relevant discovery, with numerous sub-issues;

12. Whether the trial court erred by not allowing motions to amend the complaint, with numerous sub-issues.

13. Whether the trial judge abused his discretion by not allowing the Plaintiff to put on her case first;

14. Whether the trial court erred by denying a motion to strike the Defendants' directed verdict;

15. Whether the trial judge clearly committed a reversible error by not allowing the Plaintiff to "state" admissions of party opponents;

16. Whether the trial court committed reversible errors of law by not admitting relevant documents into evidence;

17. Whether the trial court abused its discretion by making the Plaintiff pay costs.

The subjects she has incorporated under issue six are discussed briefly hereinafter.

Ms. Asam makes a statement unsupported by the record that the Court of Appeals held a Florida statute unconstitutional. That statute provides:

> For purposes of this chapter: (1) Public records means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency... Sec. 119.011(1), Fla. Stat. (1978)[3]

Ms. Asam's jurisdictional statement then audaciously asserts that the Court of Appeals held the statute unconstitutional, or repugnant to a treaty or law of the United States. A cursory reading of the Court of Appeals' decision reveals that it is not even remotely concerned with the statute which Ms. Asam tosses before the Court. A reading of the jurisdictional statement indicates that in some way Ms. Asam thinks the Court of Appeals declared the subject statute unconstitutional because they held her unemployment compensation reporting form was not a public record, even though it was contained in her personnel file. The Court of Appeals did not even reach that issue by implication. Sad to say, Ms. Asam never grasped the basic idea that her claim for defamation was fatally deficient. First, she failed to file a claim against the School Board as required by §768.28, Fla. Stat., which also specifically provides that no employee or officer in public service shall be personally liable in tort or named as a party Defendant in any action unless he acted in bad faith with malicious purpose or in willful and wanton disregard of human rights. **Rice v. Lee,** 477 So.2d 1009 (Fla. 1st DCA, 1985). Secondly, the form that was sent to the EEOC was a privileged communication and the statute specifically provides that the file shall not be made public. 42 USC §2000e-5(b). Additionally, the communication was **absolutely** privileged by statute. §443.041(3), Fla. Stat. Further, under §443.171(7), Fla. Stat., there could be no publication since the form in question was both confidential and exempt from the Public Documents Act, Ch. 119, Fla. Stat. Thus, "PHANTOM DOCUMENT #34" was never a public record.

---

[3]For purposes of this appeal the statute has remained essentially the same to date.

This Court has previously held that an appeal will not lie from a court of appeals where the court of appeals did not hold the entire state statute unconstitutional, but instead invalidated some provisions and ordered other features of the case remanded to the District Court. **Thornburgh v. American College of Obstetricians and Gynecologists,** 476 US___, 90 L.Ed.2d 779, 106 S.Ct. 2169 (1986). In such a case this Court treats such an appeal as a petition for certiorari. Likewise, this Court has held that the appellate jurisdiction of this Court can be invoked only where a court of appeals has squarely held that a state statute is unconstitutional on its face or as applied, and that it must be reasonably clear that the court of appeals independently concluded that the challenged statute governs the case and held the statute itself unconstitutional. **Burger King Corp. v. Rudzewicz,** 471 US 462, 95 L.Ed.2d 528, 105 S.Ct. 2174, (1985). In this case there is no such showing and the appeal should be dismissed.

Likewise, this "appeal" does not support a writ of certiorari to the court of appeals pursuant to 28 USC §1254(1). Rule 17, S.Ct. Rules, indicates the character of reasons that will be considered for a writ of certiorari. They are:

> (a) a conflict of decisions between federal courts of appeals;
> (b) a conflict of decisions between a federal court of appeals and a state supreme court;
> (c) a departure from the essential requirements of law;
> (d) a conflict of decisions between two (2) state supreme courts; and
> (e) an important federal question which has not previously been decided by this court.

It is therefore apparent that 28 USC §2103 is not applicable. That statute provides that if an appeal to the Supreme Court is improvidently taken from a court of appeals, in a case where the proper mode of review is by petition for certiorari, that the court can consider the appeal as a writ of certiorari. However, the appeal must fall within the guidelines for certiorari for the statute to apply. This court has held that certiorari is granted only in cases involving principles, the settlement of which is important to

the public as distinguished from the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between courts of appeal. **NLRB v. Pittsburgh SS Company**, 340 US 498, 95 L.Ed. 479, 71 S.Ct. 453, (1951). Such is not the case herein.

CONCLUSION

This appeal should be dismissed. It is clearly frivolous.

Respectfully submitted,

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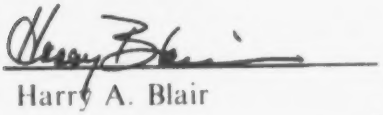
By 
Harry A. Blair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three (3) true and correct copies of the foregoing was furnished by United States Mail to JULIA McCAIN LAMPKIN ASAM, Post Office Box 1022, University, Alabama 35486, on this 23 day of October 1987.

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By Harry Blair
Harry A. Blair

APPENDIX

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 86-3142
Non-Argument Calendar

DO NOT PUBLISH

JULIA L. ASAM,

Plaintiff-Appellant,

versus

LEE COUNTY DISTRICT SCHOOL BOARD,
RAYMA C. PAGE, HOWARD DeVORE,
JOHN WILLIAM MILLS, JOHN F. BECKETT,
ROBERT L. RATLIFF, RAY V. POTTORF,
and VINCENT DeSHAZO,

Defendants-Appellees.

No. 86-3309
Non-Argument Calendar

JULIA L. ASAM,

Plaintiff-Appellee,

versus

LEE COUNTY DISTRICT SCHOOL BOARD,
RAYMA C. PAGE, HOWARD DeVORE,
JOHN WILLIAM MILLS, JOHN F. BECKETT,
ROBERT L. RATLIFF, RAY V. POTTORF,
and VINCENT DeSHAZO,

Defendants-Appellants.

Appeals from the United States District Court
for the Middle District of Florida

(April 7, 1987)

Before RONEY, Chief Judge, HILL and KRAVITCH, Circuit Judges.

PER CURIAM:

Julia L. Asam filed a complaint against the Lee County District School Board and its members, the Lee County Superintendent of Schools, and the Director of Personnel for Lee County Schools. Asam sought money damages and other relief under 42 U.S.C.A. § 1983, alleging that her reputation was stigmatized by certain acts of school board personnel, and under a pendant state claim for defamation. After a two-day trial, the district court directed a verdict on both counts, and Asam appealed. The defendants appealed the denial of their motion for attorney's fees under 42 U.S.C.A. § 1988. Both appeals were consolidated by order of this Court. We affirm.

In May 1978, Asam, an annual contract teacher at North Fort Myers High School, was advised that her contract would not be renewed for the following term. Asam filed an application for unemployment compensation on June 12, 1978, and the Florida Division of Unemployment Compensation (Division) sent a questionnaire to Vincent DeShazo, Director of Personnel for the School Board. DeShazo checked the block on the form entitled "discharged for misconduct connected with work" and noted on the form that Asam's contract was allowed to expire. The form was signed and dated by DeShazo on June 15 and mailed to the Division. Asam was contacted by the Division on June 19 and contested the block checked by DeShazo. After being telephoned by the Division, DeShazo immediately advised that Asam had not been discharged for misconduct and mailed a corrected form on June 21. Copies of both forms were placed in Asam's personnel file.

In August 1978, Asam filed a complaint with the Equal Employment Opportunity Commission (EEOC) alleging sex discrimination as a basis for her discharge. The School

Board submitted a copy of Asam's entire personnel file, including a copy of the incorrect form, to EEOC. The incorrect form, Asam claims, stigmatized her in her attempt to find employment in the teaching profession, and should not have been forwarded to EEOC.

Plaintiff raises 17 claims of error containing 37 subissues on this appeal. These claims were examined individually but have been consolidated for this discussion. First, plaintiff claims that the district court erred in granting the defendants' motion for directed verdict at the close of plaintiff's case in chief. In reviewing the grant of a directed verdict,

> The court must view all the evidence, together with all logical inferences flowing from the evidence, in the light most favorable to the nonmovant.
>
> If the facts and inferences point so strongly and overwhelmingly in favor of one party that the Court believes that reasonable men could not arrive at a contrary verdict, granting of motions is proper. On the other hand, if there is substantial evidence opposed to the motions, that is, evidence of such quality and weight that reasonable and fair-minded men in the exercise of impartial judgment might reach different conclusions, the motions should be denied, and the case submitted to the jury.

Love v. Sheffield, 777 F.2d 1453, 1454 (11th Cir. 1985), quoting Boeing Company v. Shipman, 411 F.2d 365, 374-75 (5th Cir. 1969) (en banc). A careful review of the record reveals that the act which formed the basis of the claim for liability was a mistake. The erroneous report to the Division was corrected immediately upon notification by telephone and shortly thereafter with a correctly completed form. There was no effective stigmatization arising from transmission of plaintiff's file to EEOC. Additionally, during the four-year period from her termination to the filing of this law suit, a review of her personnel file reflects only one written inquiry from a prospective employer. The responses to the prospective employer only stated the dates

of plaintiff's employment. No reference was made to the challenged incorrect form and there is no evidence that a prospective employer was ever made aware of its existence. When viewing the evidence in the light most favorable to the plaintiff, a directed verdict was proper.

Second, plaintiff asserts errors involving evidentiary rulings by the district judge. The district court is empowered with broad discretion in determining the admissibility of evidence and will be reversed only if its discretion has been abused. Loughan v. Firestone Tire & Rubber Co., 749 F.2d 1519, 1524 (11th Cir. 1985). A review of the record reveals no abuse of the court's discretion.

Third, plaintiff claims that the district court erred in denying her leave to amend her complaint. District courts exercise broad discretion when determining whether an amendment to the complaint should be allowed, once responsive pleadings have been filed, and a district court's denial of a motion to amend will be reversed only on a clear showing of an abuse of discretion. See Henson v. Columbus Bank & Trust Co., 770 F.2d 1566, 1574 (11th Cir. 1985). Plaintiff's motion to amend was filed after extensive pretrial activity and more than three years after the filing of the initial complaint. The district court was within its discretion in denying that motion.

Finally, plaintiff complains that the district court ordered a bifurcated trial with respect to the issues of liability and damages, and that the court allowed the defendants to examine plaintiff's witnesses during plaintiff's case in chief with respect to matters not covered on direct examination so that they would not have to be recalled during the defendants' case in chief. Both of these matters are within the sound discretion of the district court. See Fed. R. Civ. P. 42(b); T.D.S., Inc. v. Shelby Mut. Ins. Co., 760 F.2d 1520, 1535 (11th Cir. 1985) (district court's decision on separate trials

will not be disturbed absent an abuse of discretion); and United States v. Davis, 546 F.2d 583, 593 (5th Cir.), cert. denied, 431 U.S. 906 (1977) (the scope of cross-examination is a matter within the trial judge's sound discretion). The district court's rulings on these points cannot be faulted under the abuse of discretion standard of review.

The defendants appeal the denial of attorney's fees by the district court and have filed a motion for attorney's fees in this Court. The award of attorney's fees under 42 U.S.C.A. § 1988 is within the discretion of the district court and will not be reversed absent a showing of clear abuse of discretion. See Dowdell v. City of Apopka, Florida, 698 F.2d 1181, 1187 (11th Cir. 1983). No abuse is shown on this record. Defendants' motion for attorney's fees on this appeal is DENIED.

Because the district court neither misapplied the law nor abused its discretion, the judgments in 86-3142 and 86-3309 are due to be

AFFIRMED.

No. 87-531

Supreme Court, U.S.
FILED
NOV 10 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

JULIA McCAIN LAMPKIN ASAM, Ph.D. J.D.

Plaintiff/Appellant

vs.

LEE COUNTY DISTRICT SCHOOL BOARD, RAYMA C. PAGE, HOWARD DeVORE, JOHN WILLIAM MILLS, JOHN F. BECKETT, ROBERT L. RATLIFF, RAY V. POTTORF, AND VINCENT L. DeSHAZO

Defendants/Appellees

APPEAL FROM THE

UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

MOTION OBJECTING TO "APPELLEES' MOTION TO DISMISS APPEAL AND BRIEF IN SUPPORT THEREOF"

BRIEF OPPOSING MOTION TO DISMISS

Julia McCain Lampkin Asam, Ph.D., J.D.
P.O. Box 1022
University, Alabama 35486

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED

For Questions Presented the Appellant incorporates the Questions Presented in her Jurisdictional Statement Brief docketed as 87-531.

This instant brief is a motion re-written after being filed on October 30, 1987 as"Motion Objecting to "Appellees's Motion to Dismiss Appeal and Brief in Support Thereof" as requested by Mr. Francis J. Lorson to be in conformity with Rule 33, since Mr. Lorson returned the original "Motion ... which was typed on 3 pages of 8½ x 13 paper.

PARTIES BELOW

The Plaintiff/Appellant is Julia McCain Lampkin Asam (Julia L. Asam).

The Defendants/Appellees are Lee County District School Board, Chairman, 2055 Central Ave., Fort Myers, Florida 33901; Mrs. Rayma C. Page, 2412 Kent Ave., Fort Myers, Florida 33907; Mr. Howard DeVore, 3173 Palm Beach Blvd., Fort Myers, Florida 33901; Mr. John William Mills, 2212 River Oak Lane S.E., Fort Myers, Florida 33905; Mr. John F. Beckett, 2925 Cortez Blvd., Fort Myers, Florida 33901; Mr. Robert L. Ratliff, 9464 Lakeview Blvd., North Fort Myers, Florida 33903; Mr. Ray V. Pottorf, 950 Aqua Lane, Fort Myers, Florida 33903; Mr. Vincent DeShazo, 5084 Westminister Dr., Fort Myers, Florida 33907 and the attorney for the Lee County District School Board (Lee County School Board) is Mr. Harry A. Blair, 2138-40 Hoople St., P.O. Box 1467, Fort Myers, Florida 33902.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

No. ___

Julia McCain Lampkin Asam, Ph.D., J.D.

Plaintiff/Appellant

vs.

LEE COUNTY DISTRICT SCHOOL BOARD: RAYMA C. PAGE, HOWARD DeVORE, JOHN WILLIAM MILLS, JOHN F. BECKETT, ROBERT L. RATLIFF, RAY V. POTTORF, AND VINCENT L. DeSHAZO

Defendants/Appellees

APPEAL FROM THE

UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

The instant case is a 42 U.S.C. §1983 action because the Lee County School Board through its agent, Mr. Vincent DeShazo, was acting under color of state law when he created the false unemployment form (P.Ex.

9) which on its face stated "discharged for misconduct connected with work" when there was no misconduct and Mr. DeShazo was under constructive notice there was no misconduct since he was the custodian of the personnel file of Dr. Asam at the Lee County School Board. Mr. DeShazo immediately after the Unemployment office called corrected the unemployment form (P. Ex. 11) which was NEVER in the personnel files of Dr. Asam at the Lee County School Board. Before this lawsuit, Lee County School Board was notified that a false document (P. Ex. 9) was in the Personnel file of Dr. Asam and were requested to remove said false document (P.Ex. 9). However, Mr. DeShazo failed to remove the file (P. Ex. 9) and failed to write a note and attach to the file that the said false document (P. Ex. 9) had been corrected at the unemployment office (P. Ex. 11 which was never in the personnel file of Dr. Asam). The point is the instant case which started as a mistake that was corrected at the un-

enployment office and not at the personnel file of Dr. Asam in the Lee County School Board escalated to stigmatization of Dr. Asam's teacher's reputation when the Lee County School Board acting under color of state law failed after notice to remove the said false unemployment document (P.Ex. 9) which on the face of the document stated, "discharged for misconduct connected with work" when there was no misconduct by Dr. Asam, and the Lee County School Board failed to attach a note to said false document (P. Ex. 9) stating that it was false and had been corrected at the unemployment office. This stigmatization of Dr. Asam's teacher's reputation was a violation of her liberty rights under the Fourteenth Amendment to to the U.S. Constitution and a violation of her due process rights under the Fourteenth Amendment to the U.S. Constitution.

OPINIONS BELOW

See Jurisdictional Statement Brief 87-531 p. 9 and Appendix A-H.

JURISDICTION

The jurisdiction of the Supreme Court of the United States to review the final judgment order of the U.S. Court of Appeals, Eleventh Circuit, is invoked under 28 U.S.C. §1254, as appeal or Writ.

The Supreme Court of the United States has jurisdiction under 28 U.S.C. §2106.

The Supreme Court of the United States has jurisdiction under 42 U.S.C. §1983 and 28 U.S.C. §1343(3).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution: Amendments I, V, VII, and XIV - "liberty and due process". (See APPENDIX I for quotes of Amendments.)

Federal Statutes:

42 U.S.C. §1983

28 U.S.C. §1503

28 U.S.C. §1254

28 U.S.C. §2106

28 U.S.C. §1343(3)

State

Florida Statute 119.011(1)

STATEMENT OF THE CASE

This appeal is concerning a case of deprivation of liberty rights without due process under the Fourteenth Amendment to the U.S. Constitution with redress under the 42 U.S.C.A. §1983 and pendent libel per se with actual malice.

The key to understanding the law in the case is to first understand the facts in the instant case.

See Jurisdictional Statement 87-531 p. 14 for Statement of the Case.

MOTION OBJECTING TO "APPELLEES' MOTION TO DISMISS APPEAL AND BRIEF IN SUPPORT THEREOF"

Comes now the Plaintiff/Appellant, Julia McCain Lampkin Asam, Ph.D., J.D., and writes this "Motion Objecting to 'Appellees' Motion to Dismiss Appeal..." because Mr. Harry A. Blair, Attorney for the Defendants has misstated the facts and Mr. Blair has perpetrated a fraud on the Honorable Court by referring to a "PHANTOM DOCUMENT" was never a public

record.' (p. 9 of Mr. Blair's Brief filed the 23rd October, 1983), when in fact, the alleged "PHANTOM DOCUMENT 34" was a figment of Mr. Blair's imagination in the first place (see p. 9a of JURISDICTIONAL Statement by Julia McCain Lampkin Asam) since the documents of the defendants only went to #27 (See R4 NR 154 2/03/86 entitled EXHIBIT LIST BY Deft." in Docket sheet of the U.S. District Court, Middle District of Florida case no. 82-91 CIV F.M. 17 -- the number of the instant case in the U.S. District Court, Middle District of Florida).

The Plaintiff/Appellant incorporates all the "JURISDICTIONAL STATEMENT" submitted to this Honorable Court and the Honorable Court does have jurisdiction to consider case no. 87-531 as an appeal especially under 28 U.S.C. §1254 (2) as stated in the "JURISDICTIONAL STATEMENT" docketed September 26, 1987.

Mr. Blair in his "Statement of the Case" falsely states that "Ms. Asam's reputation

had been stigmatized in the process of non-renewal of her annual teaching contract" when the document known as (P. Ex. 9) was created after Dr. Asam's contract expired on June 9, 1978, when P.Ex.9, the false unemployment form containing on the face of the document that Dr. Asam was "discharged for misconduct connected with work", was dated June 15, 1978. The stigmatization took place when the Lee County School Board failed to remove the said false document (P. Ex.9) and the said P.Ex.9 which was retained in the personnel file of Dr. Asam when the personnel file of a teacher in Florida is a public record (See Dade County School Board v. Miami Herald Pub. Co. 443 So. 2d 268 (DCA of Fla. 3rd Dist. 1983).

Mr. Blair was correct on p. 3 that the "Personnel Director immediately made a telephonic correction and advised the State that Ms. Asam had not been discharged for misconduct connected with her work"... However, the correction was ONLY made at the unemployment

office file and there was NEVER a correction in the personnel file of Dr. Asam stating that P. Ex. 9 was not correct. Dr. Asam's teacher reputation was stigmatized so that she did not receive a transfer and did not receive a teaching position now for almost ten (10) years. Lee County School Board was still publishing this false unemployment form P. Ex. 9 in the personnel file of Dr. Asam at the time of the lower court trial in 1986, with no explanation attached to P. Ex. 9 stating it was a false document.

The Plaintiff/Appellant respectfully requested to write a Merits Brief in which a more detailed presentation of the elements of stigmatization of her teacher's reputation which violated her liberty rights under the Fourteenth Amendment to the U.S. Constitution and therefore she should receive relief under 42 U.S.C. §1983. As stated in the Jurisdictional Statement by the Plaintiff/Appellant, there are presumed damages when there is libel per se, the pendent count, (See Gertz

v. Robert Welch, Inc. 680 F. 2d 527 (7th Cir. 1982). *

ARGUMENT AND SUBSTANTIALITY OF QUESTIONS

I. The Honorable Supreme Court of the United States does have jurisdiction to review the instant case as an appeal under 28 U.S.C. 1254(2) because the Honorable U.S. Court of Appeals, Eleventh Circuit (86-3142), by affirming the pendent libel per se count, was holding Florida Statute, 119.011(1), state statute invalid and repugnant to the U.S. Constitution, Amendments One, Fifth, and Fourteenth, when the judge of the trial court erroneously directed a verdict concerning the libel per se of Dr. Asam in a public record. According to Florida Stattue, 119.011(1) a teacher's personnel file in a School Board

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*Since writing the original Motion... filed Oct. 30, 1987, Personnal File of Dr. Asam was checked on Nov. 3, 1987 with a witness and two copies of the false unemployment P. Ex. 9 are still in the personnel file with no attached correction and still stigmatizing Dr. Asam's teacher's reputation since the file is a public record and publication of the false document when the Lee County School Board KNOWS THE SAID P. Ex. 9 document which falsely states on the face of the document that Dr. Asam is "discharged for misconduct connected with work", and is libel per se.

is a public record. See Dade County School Board v. Miami Herald Pub. Co. 443 So. 2d 268 (DCA of Fla. 3rd Dist., 1983, which was cited showing personnel file of teacher is public record in Appellant brief (86-3142) to the U.S. Court of Appeals, Eleventh Circuit. see p.40 Jurisdictional Statement 87-531).

CONCLUSION

The Motion Objecting to "Appellees' Motion to Dismiss Appeal and Brief in Support Thereof" should be granted in favor of the Plaintiff/Appellant and the Motion to Dismiss Appeal by the Defendants/Appellees should be DENIED based on the true facts and law in the instant case.

The instant case 87-531 should be reviewed as an appeal by the Honorable Court as shown in the Jurisdictional Statement by Plaintiff/Appellant (case no. 87-531.).

Oral Argument and permission to write Merits Brief has been requested.

Respectfully submitted,

Julia McCain Lampkin Asam

Julia McCain Lampkin Asam, Ph.D.,J.D.

CERTIFICATE OF SERVICE (CONTINUED)

Clerk, U.S. Court of Appeals, Eleventh Circuit, 56 Forsyth St. N.W., Atlanta, Georgia 30303 this 9th day of November 1987.

Julia McCain Lampkin Asam

Julia McCain Lampkin Asam, PH.D., J.D.
P.O. Box 1022
University, Alabama 35486

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Jurisdictional Statement Brief was sent to Mr. Harry Blair, 2138-40 Hoople St., P.O. Box 1467, Fort Myers, Florida 33902; Lee County District School Board, Chairman, 2055 Central Ave., Fort Myers, Florida 33901; Mrs. Rayma C. Page, 2412 Kent Ave., Fort Myers, Florida 33907; Mr. Howard DeVore, 3173 Palm Beach Blvd., Fort Myers, Florida 33901; Mr. John William Mills, 2212 River Oak Lane S.E., Fort Myers, Florida 33905; Mr. John F. Beckett, 2925 Cortez Blvd., Fort Myers, Florida 33901; Mr. Robert L. Ratliff, 9464 Lakeview Blvd., North Fort Myers, Florida 33903; Mr. Ray V. Pottorf, 950 Aqua Lane, Fort Myers, Florida 33903; Mr. Vincent DeShazo, 5084 Westminister Dr., Fort Myers, Florida 33907; Clerk, U.S. District Court, Middle District of Florida, U.S. Courthouse, Tampa, Florida 33602; and

[For signature see back of this page for the Continuation of the Certificate of Service.]

APPENDIX

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APPENDIX B Opinion by Hon. RONEY, Chief Judge, HILL and KRAVTICH, Circuit Judges, U.S. Court of Appeals, Eleventh Circuit, Case no. 86-3142 and 86-3309 entered on April 7, 1987 ..... 6a

APPENDIX A

Filed February 27, 1984

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

FORT MYERS DIVISION

JULIA L. ASAM,

Plaintiff

v.

LEE COUNTY DISTRICT SCHOOL BOARD, et al.,

Defendants.

No. 82-91-Civ-Ft.M.-EK

ORDER ON MOTION

FOR SUMMARY JUDGMENT

This cause is before the court upon the defendants' motion for summary judgment. The plaintiff filed the suit under 42 U.S.C. §1983, alleging that the defendant Lee County District School Board had allowed her employment contract as a high school teacher to expire after the 1977-78 academic year.

APPENDIX A (CONTINUED)

Jurisdiction is conferred on this court by 28 U.S.C. §§ 1331 and 1343(3).

After plaintiff's application for unemployment compensation, and in response to the state's routine questionnaire, it is admitted that defendant Vincent L. DeShazo, the Board's director of personnel, checked a box on the form indicating that the plaintiff had been "discharged for misconduct connected with work ...." The choices on the form are apparently not before the court. Upon telephone inquiry by unemployment compensation officials, the defendant DeShazo apparently attempted to clarify the matter by explaining that the school board had allowed the plaintiff's year-to-year contract to expire.

It is acknowledged that DeShazo later filled out a similar form from the unemployment compensation office in which he again noted that the contract has been allowed to expire. De-

APPENDIX A (CONTINUED)

fendant Ray V. Pottorf subsequently sent a copy of the plaintiff's personnel file, including a copy of the initial form with the questioned notation to the Equal Employment Opportunity Commission. Although the plaintiff requested the school board to retract the unemployment form as false, a copy of the uncorrected initial form is alleged to remain in the plaintiff's permanent personnel file. The plaintiff asserts that the defendants' communications, as well as their failure to correct the false statement, resulted in a violation of her liberty interest in her reputation as guaranteed by the Fourteenth Amendment to the United States Constitution.[1]

The court previously dismissed this action against the defendant school board members in their individual capacities. (See court's Order filed April 4, 1983.) In that Order the court noted that the

> "defendants acknowledge that plaintiff's complaint contains allegations sufficient to state a claim under such cases

[1] The plaintiff further requests this court to exercise pendent jurisdiction for libel under state law.

APPENDIX A (CONTINUED)

as Marrero v. City of Hialeah, 625 F. 2d 499 (5th Cir. 1980), and Dennis v. S & S Consolidated Rural High School District, 577 F. 2d 338 (5th Cir. 1978."

Although the defendants have changed their position "in light of Paul v. Davis," and the plaintiff contests the defendants' right to do so, the court need not address that question, as the court finds summary judgment to be inappropriate.

In Paul v. Davis, 424 U.S. 693 (1976), the Supreme Court clearly held that defamation standing alone and apart from any other governmental action will not support a claim for relief under 42 U.S.C. § 1983 and the Fourteenth Amendment. Case law in this circuit, however, has construed Paul v.Davis as establishing a "stigma-plus" test in which the plaintiff must demonstrate an injury to reputation in connection with a right or status previously recognized under state law, in order to implicate Fourteenth Amendment safeguards. See Dennis, 577 F. 2d at

APPENDIX A (CONTINUED)

341.[2]

Although the plaintiff clearly had no state-protected property right in continued employment, the state may not terminate her employment in such a manner as to unfairly damage her ability to seek other employment opportunities. See Board of Regents v. Roth, 408 U.S. 564, 573 (1972). It is that potential infliction of stigma in connection with the state's failure to rehire which remains as a genuine issue of material fact, i.e., whether the "stigma-plus" test has been met. Such an issue prevents summary judgment under Rule 56, F.R.Civ.P. See also Clemons v. Dougherty County, Georgia, 684 F. 2d 1365, 1368 (11th Cir. 1982. Accordingly, the defendants' motion must be denied.

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[2]In Bonner v. City of Prichard, Ala., 661 F. 2d 1206 (11th Cir. 1981), the Eleventh Circuit adopted as established precedent all Fifth Circuit cases decided before October 1, 1981.

APPENDIX A (CONTINUED)

IT IS ORDERED, therefore, that the motion for summary judgment is DENIED.

/s/Robert D. Morgan

Robert D. Morgan

United States District Judge

Entered: Feb. 27, 1984.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 86-3142

Non-Argument Calendar

JULIA L. ASAM,

Plaintiff-Appellant,

versus

LEE COUNTY DISTRICT SCHOOL BOARD, RAYMA C. PAGE, HOWARD DeVORE, JOHN WILLIAM MILLS, JOHN F. BECKETT, ROBERT L. RATLIFF, RAY V. POTTORF, and VINCENT DeSHAZO,

Defendants-Appellees.

No. 86-3309

Non-Argument Calendar

APPENDIX B (CONTINUED)

JULIA L. ASAM,

Plaintiff-Appellee,

versus

LEE COUNTY DISTRICT SCHOOL BOARD, RAYMA C. PAGE, HOWARD DeVORE, JOHN WILLIAM MILLS, JOHN F. BECKETT, ROBERT L. RATLIFF, RAY V. POTTORF, and VINCENT DeSHAZO,

Defendants-Appellants.

Appeals from the United States District Court for the Middle District of Florida

(April 7, 1987)

Before RONEY, Chief Judge, HILL and KRAVITCH, Circuit Judges.

PER CURIAM:

Julia L. Asam filed a complaint against the Lee County District School Board and its members, the Lee County Superintendent of Schools, and the Director of Personnel for Lee County Schools. Asam sought money damages and other relief under 42 U.S.C.A. §1983, alleging that her reputation was stigmatized by certain acts of school board personnel,

APPENDIX B (CONTINUED)

and under a pendant state claim for defamation. After a two-day trial, the district court directed a verdict on both counts, and Asam appealed. The defendants appealed the denial of their motion for attorney's fees under 42 U.S.C.A. §1988. Both appeals were consolidated by order of this Court. We affirm.

In May 1978, Asam, an annual contract teacher at North Fort Myers High School, was advised that her contract would not be renewed for the following term. Asam filed an application for unemployment compensation on June 12, 1978, and the Florida Division of Unemployment Compensation (Division) sent a questionnaire to Vincent DeShazo, Director of Personnel for the School Board. DeShazo checked the block on the form entitled "discharged for misconduct connected with work' and noted on the form that Asam's contract was allowed to expire. The form was signed and dated by DeShazo on June 15 and

APPENDIX B (CONTINUED)

mailed to the Division. Asam was contacted by the Division on June 19 and contested the block checked by DeShazo. After being telephoned by the Division, DeShazo immediately advised that Asam had not been discharged for misconduct and mailed a corrected form on June 21.[1] Copies of both forms were placed in Asam's personnel file.[2]

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[1]There is no form entitled "corrected form" in the personnel file of Dr. Asam at the Lee County School Board. Mr. Harry Blair, attorney for Lee County school Board falsely states in his Reply Brief in the 86-3309 case that "Document #34 is the corrected form" which is a phantom document since the exhibits by the Defendants only went to #27 - see R4 NR 154 2/03/86 entitled "EXHIBIT LIST by Deft." in Docket sheet of the U.S. District Court, Middle District of Florida case no. 82-91 CIV F.M. 17.]

[2]The bottom line is there was never a corrected form in Dr. Asam's Personnel File that stated that the unemployment form signed by Mr. DeShazo on June 15, 1978 was a mistake; the only corrected form was at the unemployment office (P. Ex. 11) and NOT at the School Board's Personnel File of Dr. Asam.

Therefore, the statement by the Honorable panel of the U.S. Court of Appeals, Eleventh Circuit, on p. 3 of their opinion which states above,

..."mailed a corrected form on June 21. Copies of both forms were placed in Asam's personnel file." is an incorrect statement of the facts. See Docket Sheet of U.S. Court of Appeals, Eleventh Circuit, for Memorandum filed by Plaintiff/Appellant on September 12,

APPENDIX B (CONTINUED)

In August 1978, Asam filed a complaint with the Equal Employment Opportunity Commission (EEOC) alleging sex discrimination as a basis for her discharge. The School Board submitted a copy of Asam's entire personnel file, including a copy of the incorrect form, to EEOC. The incorrect form, Asam claims, stigmatized her in her attempt to find employment in the teaching profession, and should not have been forwarded to EEOC.

Plaintiff raises 17 claims of error containing 37 subissues on this appeal. These claims were examined individually but have been con-

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[Footnote 2 (Continued)]
22, 25 (entered 26), and on October 10 and 14, 1986 explaining Mr. Blair's deceptive practice because there was no corrected unemployment document in Dr. Asam's personnel file that stated it was a correction.

Note the form in question on June 21 was stamped received June 21, 1978 by PERSONNEL and the said form was mailed from the unemployment office to Lee County School Board c/o Personnel Director and was mailed on 6/19/78 and is entitled REIMBURSABLE. (See P. Ex. 82 index p. 2 and the said REIMBURSABLE is listed as item 62 by the Lee County School Board index and no mention is made of any corrected form for P. Ex. 9, the false unemployment form stating that Dr. Asam was "discharged for misconduct connected with work" when there was no misconduct. The Reimbursable form does not state on the face of it that it is a corrected form. The Lee

APPENDIX B (CONTINUED)

solidated for this discussion. First, plaintiff claims that the district court erred in granting the defendants' motion for directed verdict at the close of plaintiff's case in chief. In reviewing the grant of a direc- verdict,

> The court must view all the evidence, together with all logical inferences flowing from the evidence, in the light most favorable to the non-movant.
> If the facts and inferences point so strongly and overwhelmingly in favor of one party that the Court believes that reasonable men could not arrive at a contrary verdict, granting of motions is proper. On the other hand, if there is substantial evidence opposed to the motions, that is, evidence of such quality and weight that reasonable and fair-minded men in the exer-

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[Footnote 2 (Continued)]

County School Board incorrectly has listed on item 62 in P. Ex. 82, the personnel file, that Mr. DeShazo signed 6/19/78 which is impossible since the item 62 is stamped received June 21, 1978 Personnel[This is the Personnel of the Lee County School Board]. The point is that this Reimbursable document stamped received June 21, 1978 Personnel does not on the face of the document state it is a corrected form of the unemployment false document (P.Ex. 9). P. Ex. 9 in the index is item 61 in index of P. Ex. 82 and is listed as item 61 "Unemployment Compensation form signed by Vincent DeShazo 6/15/78 (2 copies)". Therefore, Lee County School Board retained two false documents (P. Ex. 9) in the Personnel File of Dr. Asam.]

APPENDIX B (CONTINUED)

> cise of impartial judgment might reach different conclusions, the motions should be denied, and the case submitted to the jury.

Love v. Sheffield, 777 F. 2d 1453, 1454 (11th Cir. 1985), quoting Boeing Company v. Shipman, 411 F. 2d 365, 374-75 (5th Cir. 1969) (en banc). A careful review of the record reveals that the act which formed the basis of the claim for liability was a mistake[3] The erroneous report to the Division was corrected immediately upon notification by telephone and shortly thereafter with a correctly com-

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[3The U.S. Court of Appeals, Eleventh Circuit, is correct that the basis of the claim for liability started with a mistake; however, the U.S. Court of Appeals, Eleventh Circuit did not carefully review P. Ex. 82 and note that P. Ex. 11, the true corrected unemployment document is not in the Personnel File of Dr. Asam. The point is that the Lee County School Board through Mr. DeShazo corrected immediately the mistake in P. Ex. 9 and the said correction remained in the unemployment office and was NEVER IN THE PERSONNEL FILE of Dr. Asam at the Lee County School Board. There is no form in the Personnel File of Dr. Asam that states that it is the corrected form of the false unemployment form (P. Ex. 9) — see P. Ex. 82, the personnel file, p. 2 for index items 61 and 62.]

APPENDIX B (CONTINUED)

pleted form.[4] There was no effective stigmatization arising from transmission of plain-

[4]The point is the corrected form was NEVER IN THE PERSONNEL FILE of Dr. Asam at the Lee County School Board which is known as P. Ex.11 (Note by reviewing P.Ex.82 - the personnel file of Dr. Asam that there is not a document such as P. Ex. 11, the true correction by Mr. DeShazo only at the unemployment office).
The point is what started as a mistake (P. Ex. 9) escalated to stigmatization when the Lee County School Board failed to remove the said false document (P. Ex. 9) after notice (Exhibit 4 of Defendants Exhibits but the Exhibit 4 was a letter by Dr. Asam dated May 7, 1982. On May 7, 1982 before filing the instant underlying case, a demand was made to the Lee County School Board to remove said false unemployment form from the Personnel File of Dr. Asam (See Exhibit 4 of Defendants' Exhibits, which was written by Dr. Asam to School Board). Even after this notice on May 7, 1982 which was an update of a letter on Sept. 20, 1978, the Lee County School Board refused to remove the false unemployment form and did not make a corrected form after demand for removal of said false unemployment form. At this time the mistake escalated to stigmatization because the Lee County School Board ratified Mr. DeShazo's actions and was knowingly maintaining a false document in the Personnel File of Dr. Asam without a corrected form stating that P.Ex. 9 was incorrect or without removing P. Ex. 9 from the Personnel File of Dr. Asam. The U.S. Court of Appeals, Eleventh Circuit did not carefully review the record or they would have also noticed that the P. Ex. 9 (item 61) in the Personnel File of Dr. Asam (P.Ex. 82) is in the personnel file in duplicate with no document stating that P. Ex. 9 has been corrected.

The point is the U.S. Court of Appeals, Eleventh Circuit was mislead by the phantom document #34 by Mr. Blair in his Reply Brief in the related case 86-3309 consolidated with 86-3142. The U.S. Court of Appeals, Eleventh Circuit, was notified as stated in the footnote above about the non-existing #34 document which was

APPENDIX B (CONTINUED)

tiff's file to EEOC.[5] Additionally, during the four-year period from her termination to the filing of this law suit, a review of personnel file reflects only one written inquiry[6] from a prospective employer. The re-

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[Footnote [4] Continued]
not accepted into evidence and has never been seen by Dr. Asam. (see docket sheets of 86-3142 in the U.S. Court of Appeals, Eleventh Circuit, the Memorandum by Dr. Asam after the Reply Brief to 86-3309 was filed by Mr. Harry Blair, Attorney, for the Lee County School Board.]

[[5]There is no proof that there was no effective stigmatization arising from transmission of plaintiff's file to EEOC since collateral issue - the EEOC may not have pursued the case because of the false document now known as P. Ex. 9. It was the EEOC that told Dr. Asam that the false document now known as P. Ex. 9 was in the personnel file since Dr. Asam did not know it was in the personnel file until EEOC gave her a copy of P. Ex. 9.
The point is the Personnel File of Dr. Asam was a public record according to Florida Statute 119.011(1) as stated in Dade County School Board v. Miami Herald Pub. Co. 443 So. 2d 268 (DCA of Fla. 3rd Dist., 1983), and therefore is a permanent publication. (See composite exhibits, P. Ex. 107, 108, and 109 showing enormous number of positions applied for by Dr. Asam and no one hired her when she had the highest qualifications - i.e. Rank I as a teacher's certification.)]

[[6]See p. 13 of Appellant Brief, U.S. Court of Appeals, 11th Circuit 86-3142 showing in detail how Ms. Rayna Page, Chairman of the Lee County School Board, gave an example of how information the personnel file kept a teacher from being hired - Ms. Page said..." word of mouth got around and she didn't get hired ... (P.

sponses to the prospective employer only stated the dates of plaintiff's employment. No reference was made to the challenged incorrect form and there is no evidence that a prospective employer was ever made aware of its existence. When viewing the evidence in the light most favorable to the plaintiff, a directed verdict was proper.

Second, plaintiff asserts errors involving evidentiary rulings by the district judge. The district court is empowered with broad discretion in determining the admissibility of evidence and will be reversed only if its discretion has been abused. Loughan v. Firestine Tire & Rubber Co., 749 F. 2d 1519, 1524

[Footnote 6 continued]

Ex. 154, p. 37 l. 25). Therefore, one letter in the Personnel File of Dr. Asam concerning an inquiry is not a true answer when said filed is RETAINED BY DEFENDANTS and the Defendant Ms. Page admitted that word of mouth was the way a teacher is not hired from a bad record in personnel file. This false document (P. Ex. 9) definitely stigmatized Dr. Asam in her "Request for Transfer". (See D. Ex. 8 showing Request for Transfer checked.)]

APPENDIX B (CONTINUED)

(11th Cir. 1985). A review of the record reveals no abuse of the court's discretion.[7]

Third, plaintiff claims that the district court erred in denying her leave to amend her complaint. District courts exercise broad discretion when determining whether an amendment to the complaint should be allowed, once responsive pleadings have been filed, and a district court's denial of a motion to amend will be reversed only on a clear showing of an abuse of discretion. See Henson v. Columbus Bank & Trust Co., 770 F. 2d 1566, 1574 bus Bank & Trust Co., 770 F. 2d 1566, 1574 (11th Cir. 1985). Plaintiff's motion to amend was filed after extensive pretrial activity and more than three years after the filing of the initial complaint. The district court

[7The bottom line is that the Hon. Judge Morgan abused his discretion when he verbally attacked Dr. Asam in open court when the judge said for no reason "You are your own worst enemy" (R7 376 l. 8). See Statement of Facts this Brief for other abuse of discretion by the Hon. Judge Morgan, who denied the post-trial motions and then the judge recused himself from any further proceedings. See APPENDIX E].

was within its discretion in denying that motion.

Finally, plaintiff complains that the district court ordered a bifurcated trial with respect to the issues of liability and damages, and that the court allowed the defendants to examine plaintiff's witnesses during plaintiff's case in chief with respect to matters not covered on direct examination so that they would not have to be recalled during the defendants' case in chief. Both of these matters are within the sound discretion of the district court. See Fed. R. Civ. P. 42(b); T.D.S., Inc. v. Shelby Mut. Ins. Co., 760 F. 2d 1520, 1535 (11th Cir. 1985) (district court's decision on separate trials will not be disturbed absent an abuse of discretion); and United States v. Davis, 546 F. 2d 583, 593 (5th Cir.), cert. denied, 431 U.S. 906 (1977) (the scope of cross-examination is a matter within the trial judge's sound discretion). The district court's rulings on these points cannot be

APPENDIX B (CONTINUED)

faulted under the absue of discretion standard of review.

The defendants appeal the denial of attorneys's fees by the district court and have filed a motion for attorney's fees in this Court. The award of attorney's fees under 42 U.S.C.A. §1988 is within the discretion of the district court and will not be reversed absent a showing of clear abuse of discretion. See Dowdell v. City of Apopka, Florida, 698 F. 2d 1181, 1187 (11th Cir. 1983). No abuse is shown on this record. Defendants' motion for attorney's fees on this appeal is DENIED.

Because the district court neither misapplied[8] the law nor abused its discretion, the judgments in 86-3142 and 86-3309 are due to be AFFIRMED.

[8The point is that the Hon. Judge Morgan misapplied the law in Clemons v. Doughterty County, Georgia, 684 F. 2d 1365, (11th Cir. 1982), because the same Judge Morgan of the U.S. District Court, Middle District of Florida, who denied the Summary Judgment for Defendants, granted a Directed Verdict for Defendants on the same facts i.e. stigmatization issue (R2 58 1-3) when summary judgment is precluded by Clemons v. Dougherty County, Georgia 684 F. 2d 1365, (11th Cir. 1982).]